

To USOE, USDB, IC, and AC,

April 14, 2007

I would like to express some deep concerns about certain provisions in Utah Code 53A which directly impacts USDB's ability to provide services. In particular, I want to target sections 53A-25-103 and 53A-25-104. To me, 103 says USDB will provide a free education to deaf children in Utah under age 21. It also says that children, who are not receiving an adequate education in public schools because of deafness, may ... be admitted to USDB. Then 104 says that these deaf children need to qualify for special education to receive placement at the school: "In determining the *initial* placement... child shall be referred to [his/her local] school district... [to] determine whether the child is eligible for special education service," emphasis added. In other words, if a deaf child is deemed ineligible, he or she can't be placed at USDB. It also means that each child has to have a hearing loss AND an academic delay of some sort. These two sections seem to contradict each other. The first says USDB is to educate all deaf children, and then the second says the children have to be eligible to get services from USDB.

As a deaf individual who was raised with inadequate education and as a parent of two deaf children, I have worked hard to develop strategies for improving the quality of education for all deaf and hard of hearing students in Utah. After a recent IEP, I learned about Utah Code 53A-25; which regulates USDB. It blew my mind and opened my eyes to how this law could be the number one barrier to improving the quality of education for deaf and hard of hearing students in the state of Utah. Please allow me to give you examples. Because of Code 53A-25-104, I face the following dilemmas (I will use my children as examples, but I believe they are representative of many other deaf children in Utah):

1. My two kids, Joshua's and Danielle's lower test scores help them qualify for their placement at JMS. The evaluator signed Signed Exact English during the evaluation. They may have done better if American Sign Language was used. In a way, it could even be a good idea to "allow" my kids to continue to obtain lower test scores in order to achieve eligibility for special education services. However, if we allow this, some deaf students, including my children who have normal cognitive ability, may suffer by being placed in classes with other "truly" academically delayed students, as has been happening at USDB for years. Moreover, due to the limited number of students, USDB's programs are unable to provide a varied curriculum for honor, regular and resource students. Thus, many students transfer out of the program to get a better education. Or students that are on or above "grade level" are forced into mainstreaming situations that restrict communication and direct access to peers and adults that use their same language.
2. If I teach my kids linguistically/academically at home to make up for sub-par education at school, they will catch up and be on par with hearing peers. But, then they will not be allowed to remain at JMS. If I avoid teaching them at home so they can remain academically behind and stay at JMS, they will not be prepared for college and be productive/literate citizens in society. They may end up living on welfare or working at a minimum wage job, just like many (probably most) deaf people do.

3. If my kids' test scores are high and are on par with hearing peers, they will have to transfer out of JMS to a school district. It does not matter how little hearing they have. It is simply because they are no longer qualified for Special Education. However, they will suffer in a mainstream setting where they are not likely to receive a free and appropriate public education (FAPE) in a least restrictive environment (LRE). They will experience loneliness/isolation and their direct language and communication accessibility needs will be denied, a similar experience by many deaf and hard of hearing students. Additionally, they will have to deal with poor interpreting services. Their school district will not be as familiar with Deaf education and may inappropriately serve them. Etc. This situation may leave me with no choice but to transfer them out of state where they may receive a better education, like a lot of families have done in the past and continue to do, especially JMS families. After the USDB/JMS merger, I have been watching JMS slowly lose students and deteriorating its academic expectations. The cycle that has occurred in the USDB system for years is now repeating itself at JMS.

Code 53A-25-104 affects USDB. For example, even though JMS aims to provide a high quality of education with direct communication/instruction and a *total immersion program* in language and communication, it is not allowed to serve students who don't qualify for special education. The Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD)'s Position Paper as of February 2007 states that *the notion LRE for deaf children means a Language Rich Environment*. Code 53A-25-104 conflicts with JMS' ASL/English bilingual educational philosophy which is designed for deaf students with normal to high cognitive and academic abilities. It also conflicts with other USDB programs and is hurting retention at USDB in general. For more information, please refer to CEASD's Position Paper website link at: <http://www.ceasd.org/acrobat/continuum.pdf>

With its emphasis on special education, Code 53A-25-104 makes it difficult for USOE, USDB and IC to develop effective communication and language-driven educational options in the delivery system for every deaf and hard of hearing child. It is also difficult to advocate for a quality, literacy-focused, language-rich education. Deaf and hard of hearing students have unique language and communication needs that must be met if they are to succeed linguistically as well as educationally. The National Agenda for Achieving Educational Equality for Deaf and Hard of Hearing Students states that the nation-wide system in general does not understand the central role that language and communication play for [deaf] students. Without direct focus on language/communication, it is extremely difficult to develop a high-quality, student-centered program.

Furthermore, because USDB views its Deaf education students more as Special Education, when the students receive high scores on tests, they are transferred out to school districts. When IEP goals can't be developed, for example, math goals cannot be developed unless the student is below level in math, the student is "kicked out." He/she is no longer considered eligible for special education. Teachers who are trained and certified in the field of Deaf education are not able to maximize their potential simply because they lose academically advanced students to school districts and have to deal with Special Education students for which some teachers are not trained. Education is then sub-par. The cycle goes on and on.

It is a common misconception that IDEA requires mainstreaming. Rather, as explained by The Educational Services Guidelines, the law requires public agencies to make available a continuum of alternative placements to meet the needs of students with disabilities. CEASD's Position Paper supports this by *emphasizing the importance of providing full continuum of alternative educational placements required by IDEA, including special schools (deaf schools) for deaf and hard of hearing students*. CEASD finds that recent trend in our nation to remove special schools from the continuum to be unacceptable, potentially harmful to the child's human development and clearly counter to the spirit of IDEA. *However, USDB removed Utah's "special school" some time ago.* (Now that JMS has come into the picture, though, JMS can meet the "deaf school" option in Utah.)

When Dr. Robert Sanderson was on the Institutional Council, the IC went on record "that students need to be mainstreamed to the maximum when possible." He wrote an article in which he stated that mainstreaming is not the answer for all deaf children. CEASD says the same thing it mentions that a "least restrictive environment" is not a generic concept or a "one-size fits all," but a concept addressing each child's individual communication, language and educational needs, not the other way around. In another article, however, Dr. Robert Sanderson mentioned that in Utah, ninety percent or more of the deaf and hard of hearing students are mainstreamed in public schools and under the public schools administratively, or in small units directly under USDB supervision and educational programs but housed in public schools (Sanderson, 2001).

CEASD states that the concept of mainstreaming works with many students with disabilities, especially where the language used (and readily accessed) is the same for both the students with disabilities and the "normal" children: spoken English. However, in real life situations, especially for Deaf and hard of hearing students, isolation is often the all too prevalent result, because of language and communication difficulties. *In Siegel (2005)'s view, IDEA is primarily a placement-driven policy in which "least restrictive environment" is more often interpreted to mean close to home or mainstreamed rather than truly accommodating.*

CEASD and several other projects and organizations recognize that access to communication *should drive educational decision making, including placement decisions, throughout the IEP process for deaf and hard of hearing students*. CEASD further states that because schools for the deaf are specifically designed for children with hearing loss, for many students, including those who are on grade level, they are the appropriate placement, and in fact, are the least restrictive environment in which they can achieve successful educational outcomes.

As I am seeking to improve the quality of deaf educational system, I would like to suggest that USDB (and school districts) incorporate or participate in the following law/guidelines/programs:

1. Individuals with Disabilities Education Act 2004, particularly Section 300.324.
 - (a) (2) (iv) that specifically recognizes the unique communication needs of deaf and hard of hearing students.

2. The United States Department of Education's policy guidance -- <http://www.listen-up.org/rights/policy.htm>.
3. The National Association of State Special Education Directors' Educational Services Guidelines for Meeting the Needs of Students who are Deaf or Hearing of Hearing Book (2006) -- www.NASDSE.org
4. The National Deaf Education Project (NDEP) -- <http://www.ndepnow.org/>
5. State Leaders Summit on Deaf Education -- <http://www.ndepnow.org/>
6. The Deaf Child's Educational Bill of Rights committee -- <http://www.ndepnow.org/>
7. "Language planning" -- NASDSE has developed a into the IEP development process and have devised a document explaining how language planning can be incorporated into the IEP development process. -- www.nasdse.org on the Deaf Education Initiative Project Page.
8. The Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD) -- <http://www.ceasd.org/>

I believe Code 53A-25-104 adds a barrier to promoting quality education at USDB/JMS because it emphasizes special education instead of deaf education, making it a placement-focused process rather than providing communication and language-driven educational options. With this law in the way, it will be impossible to improve the quality of deaf education in regard to language and communication accessibility needs even with the assistance of the abovementioned guidelines. For instance, when a child who is at or above grade level asks for direct communication at a school for deaf and hard of hearing children, he/she will potentially be denied access because he/she does not qualify for special education. Section 53A-25-103 does state the provision that individuals who are "incapable of receiving adequate instruction in other public schools [because of deafness], may, "in the discretion of the board of trustees, be admitted to the school." However, there don't seem to be consistent guidelines as to how the board of trustees can be consulted and provide, at "their discretion," permission for the individuals to be placed at USDB.

I feel strongly about using the guidelines listed above to develop strategies on how to reform Deaf Education in Utah. Code 53A-25-104 needs to be amended to fit current Deaf Education trends and to lift the restrictions mentioned above. USDB should serve both delayed and non-delayed students as stated in 25A-25-103. This can be done by having IEPs written for those with a delay, and utilizing Section 504 for services provided to students who are on-level. This indicates that the students still need accommodations in the form of direct communication and instruction. This way, USDB can provide services to any deaf or hard-of-hearing student.

1. Because of all of the barriers we have been facing for years, I request that USOE convene a task force this summer to reevaluate the students we serve at USDB and analyze how Code 53A-25-104 impacts deaf students at USDB.
2. In order to change or amend the law, I request that USOE, USDB, and IC (including a JMS representative) along with internal and external stakeholders to be familiar with the guidelines as listed above and utilize them to help Individualized Education Program Teams to 1.) Preserve a full continuum of alternative educational placements, including deaf school as required by IDEA, 2.) Identify appropriate educational services in LRE, 3.) Provide flexible educational placement options to meet parents/students' preferences, and 4.) Ensure academic equity and excellence for students who are deaf and hard of hearing.
3. I request that USDB considered a Deaf Education program that also serves those students who qualify for Special Education.
4. I request that USDB change from agency to school.
5. I request that the IC set up three sub-steering committees (representing Deaf, Blind and Deaf-Blind) to work with USOE, USDB and general stakeholders to change/amend Code 53A-25-104 and focus on their respective National Agendas to seek strategies on how to meet deaf/hard of hearing and blind/visually impaired and Deaf-Blind students' linguistic and educational needs.

Before I close, I am aware that this letter may seem to focus on Deaf and hard of hearing students who attend JMS. However, I believe that Code 53A-25-104 applies to deaf students being educated by other methods. For example at Central Institute for the Deaf, an oral deaf school, their website says, "we foster literacy for every child. It begins with our dynamic, uncompromising New Auditory-Oral Preschool program that incorporates mainstream educational methods designed to help deaf children develop emerging literacy and pre-academic skills in a print-and language-rich environment." Oral students should likewise be allowed to remain with other deaf students even if they are at grade level, if they want to remain. I believe the same can be said for total communication students.

Finally, when HB 291 came into legislature, USDB made a commitment to reevaluate the students we serve at USDB. I think this highlights the need to change Code 53A-25-104. We can prevent the barrier from affecting current and future students. If we change this code, we will make a difference in the lives of deaf and hard of hearing students for years to come. It should be our #1 priority as we prepare for the next legislative session.

Thank you for your time and attention.

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Institutional Council Member