WEST VIRGINIA CODE: §16-1-20

§16-1-20. Definitions and purpose.

(a) For the purpose of this code:

"English" means and includes spoken English, written English, or English with the use of visual supplements;

"Language developmental milestones" means milestones of development aligned with the existing state instrument used to meet the requirements of federal law for the assessment of children from birth to five years of age, inclusive; and

"Language" includes American Sign Language (ASL) and English.

(b) For the purposes of developing and using language for a child who is deaf or hard-of-hearing, the following modes of communication may be used as a means for acquiring language: American Sign Language (ASL) services, spoken language services, dual language services, cued speech and tactile, or a combination thereof.

(c) This section shall apply only to children from birth to five years of age, inclusive.

(d) Implementation of this code is subject to an appropriation by the legislature.

(e) Federal regulations for children age birth through two do not require reporting of measures specific to language and literacy. However, this data is reported for children age three to five and the Department of Health and the West Virginia Department of Education shall make this report available to the advisory committee, and available to others upon request.

(f) The Department of Health and the West Virginia Department of Education through their agencies that serve children ages birth to five and their families shall jointly select language developmental milestones from existing standardized norms, to develop a family resource for use by families, providers, early interventionists, speech pathologists, educators, and other service providers to understand and monitor deaf and hard-of-hearing children’s receptive and expressive language acquisition and progress toward English literacy development. This family resource shall include:

(1) Language that provides comprehensive and neutral, unbiased information regarding different modes used to learn and access language (e.g., English, American Sign Language (ASL), or both) and services and programs designed to meet the needs of children who are deaf or hard-of-hearing;

(2) Language developmental milestones selected pursuant to the process specified in this section;

WV Legislature

(3) Language appropriate for use, in both content and administration, with deaf and hard-of-hearing children from birth to five years of age, inclusive, who use both or one of the languages of American Sign Language (ASL) or English;

(4) Developmental milestones in terms of typical development of all children, by age range;

(5) Language written for clarity and ease of use by families;

(6) Language that is aligned with the Department of Health and the West Virginia Department of Education's existing infant, toddler, and preschool guidelines, the existing instrument used to assess the development of children with disabilities pursuant to federal law, and state standards in language and literacy;

(7) Clarification that the parent(s) have the right to select which language (American Sign Language (ASL), English, or both) for their child's language(s) acquisition and developmental milestones;

(8) Clarification that the family resource is not a formal assessment of language and literacy development, and that a family's observations of their children may differ from formal assessment data presented at an individualized family service plan (IFSP) or individual education program (IEP) meeting; and

(9) Clarification that the family resource may be used during an individualized family service plan (IFSP) or individual education program (IEP) meeting for purposes of sharing the family's observations about their child's development.

(g) The Department of Health and the West Virginia Department of Education shall also prepare a list of valid and reliable existing tools or assessments for providers, early interventionists, speech pathologists, educators, and other service providers that can be used periodically to determine the receptive and expressive language and literacy development of deaf and hard-of-hearing children. These educator tools and assessments:

(1) Shall be in a format that shows stages of language development;

(2) Shall be used by providers, early interventionists, speech pathologists, educators, and other service providers to determine the progressing development of deaf and hard-of-hearing children's receptive and expressive language acquisition and developmental stages toward English literacy;

(3) Shall be selected from existing instruments or assessments used to assess the development of all deaf and hard-of-hearing children from birth to five years of age, inclusive;

(4) Shall be appropriate, in both content and administration, for use with children who are deaf and hard-of-hearing;

WV Legislature

(5) May be used, in addition to the assessment required by federal law, by the individualized family service plan (IFSP) team and individual education program (IEP) team, as applicable, to track deaf and hard-of-hearing children's progress, and to establish or modify individualized family service plans (IFSPs) and individual education programs (IEPs); and

(6) May reflect the recommendations of the advisory committee established pursuant to §16-1-20(e) of this code.

(h) To promote the intent of this code, the Department of Health and the West Virginia Department of Education shall:

(1) Disseminate the family resource developed to families of deaf and hard-of-hearing children, as well as providers, early interventionists, speech pathologists, educators, and related service personnel; and

(2) Disseminate the educator tools and assessments selected to local educational agencies for use in the development and modification of individualized family service plans (IFSPs) and individual education programs (IEPs);

(3) Provide informational materials on the use of the resources, tools, and assessments to assist deaf and hard-of-hearing children in becoming linguistically ready for formal school entry (either itinerant services, West Virginia Universal PreK/PreK Special Needs, or Kindergarten) using the mode(s) of communication and language(s) chosen by the parents.

(i) If a deaf or hard-of-hearing child does not demonstrate progress in receptive and expressive language skills, as measured by one of the educator tools or assessments, or by the existing instrument used to assess the development of children with disabilities pursuant to federal law, as applicable, the child's individualized family service plan (IFSP) team and individual education program (IEP) team shall, as part of the process required by federal law, explain in detail the reasons why the child is not meeting the language developmental milestones or progressing towards them, and shall recommend specific strategies, services, and programs that shall be provided to assist the child's success toward English literacy development.

(j) The Department of Health and the West Virginia Department of Education shall establish an advisory committee to solicit input from stakeholders identified herein on the selection of language developmental milestones for children who are deaf or hard-of-hearing that are equivalent to those for children who are not deaf or hard-of-hearing, for inclusion in the family resource developed pursuant to this section.

(k) The advisory committee shall be comprised of volunteer individuals representing all known modes of communication, specifically including the following:

(1) One parent of a child who is hard-of-hearing who uses the dual languages of American Sign Language (ASL) and English;

WV Legislature

(2) One parent of a child who is deaf or hard-of-hearing who uses assistive technology to communicate with spoken English;

(3) Two or three credentialed providers, early interventionists, speech pathologists, educators, or other service providers of deaf or hard-of-hearing children who are knowledgeable in the use of the dual languages of English and American Sign Language (ASL);

(4) Two or three credentialed providers, early interventionists, speech pathologists, educators, or other service provider of deaf or hard-of-hearing children who are knowledgeable in the use of assistive technology to communicate with spoken English;

(5) One expert who researches or is knowledgeable in the research regarding language outcomes for deaf and hard-of-hearing children using American Sign Language (ASL) or English;

(6) One expert who researches or is knowledgeable in the research regarding language outcomes for deaf and hard-of-hearing children using assistive technology to communicate with spoken English;

(7) One credentialed educator of deaf and hard-of-hearing children whose expertise is in curriculum and instruction in American Sign Language (ASL) and English;

(8) One credentialed educator of deaf and hard-of-hearing children whose expertise is in curriculum and instruction in assistive technology to communicate with spoken English;

(9) One advocate for the teaching and use of the dual languages of American Sign Language (ASL) and English;

(10) One advocate for the teaching and use of instruction in assistive technology to communicate with spoken English; and,

(11) One educational audiologist who can address the issues of aural habilitation and assistive technology to advocate for children using spoken language in mainstream environments.

(l) The advisory committee may also advise the Department of Health and the West Virginia Department of Education on the content and administration of the existing instrument used to assess the development of children with disabilities pursuant to federal law, as used to assess deaf and hard-of-hearing children’s language and literacy development to ensure the appropriate use of that instrument with those children, and make recommendations regarding future research to improve the measurement of progress of deaf and hard-of-hearing children in language and literacy.

(m) The Department of Health and the West Virginia Department of Education shall provide the advisory committee with a list of existing language developmental milestones from

WV Legislature

existing standardized norms, along with any relevant information held by the departments regarding those language developmental milestones for possible inclusion in the family resource developed pursuant to this section.

(n) After reviewing, the advisory committee shall recommend to the Department of Health and the West Virginia Department of Education language developmental milestones for selection.

(o) Commencing on or before July 31, 2021, and on or before each July 31 thereafter, the West Virginia Department of Education shall annually produce an aggregated report, using existing data reported in compliance with the federally required state performance plan on children with disabilities, that is specific to language and literacy development of children whose primary exceptionality is deaf and hard-of-hearing from birth to five years of age, inclusive, including those who are deaf or hard-of-hearing and have other disabilities, relative to their peers who are not deaf or hard-of-hearing. The departments shall make this report available to the advisory committee, the Legislative Oversight Commission on Education Accountability, the Legislative Oversight Commission on Health and Human Resources Accountability, and available to others upon request.

(p) All activities of the Department of Health and the West Virginia Department of Education in implementing this code shall be consistent with federal law regarding the education of children with disabilities and federal law regarding the privacy of student information.

WV Legislature