

Date of Hearing: April 6, 2022

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2541 (Quirk-Silva) – As Amended March 17, 2022

SUBJECT: Special education: funding: deaf and hard of hearing children

SUMMARY: Adds funding to the Special Education Early Intervention Preschool Grant (SEEIPG) for the purpose of school districts contracting with the State Special Schools for the Deaf (SSSDs) and nonpublic schools (NPS) or nonpublic agencies (NPAs) for specified early language intervention services for children who are deaf or hard of hearing (DHH), ages 0-5. Specifically, **this bill:**

- 1) Requires the SPI to add an unspecified sum to the SEEIPG, based on the total number of children from birth to five years of age, inclusive, who are DHH, in order to contract with the California School for the Deaf, or nonprofit organizations, including, but not limited to, NPS or NPAs for the purposes of providing the following services to children from birth to five years of age, inclusive, who are DHH, consistent with the child's individualized education program (IEP) or individualized family service plan (IFSP):
 - a) Highly specialized services to provide full access for early language intervention services, beyond the scope of services provided through a local educational agency (LEA); and
 - b) Services with a frequency and intensity beyond the capacity of the LEA.
- 2) Requires that funding for children ages 0 to five years of age who are DHH be allocated to settings that offer both or one of the languages of American Sign Language (ASL) and English.
- 3) Requires that for DHH settings, funding allocated to school districts be used to provide services and supports in inclusive settings that offer both or one of the languages of ASL and English for the purposes of providing fully accessible language development, including:
 - a) Strategies to improve pupil outcomes identified through the state system of support, including placement in settings that provide the greatest access to language, are the least isolating, and are the least restrictive environment for the child. For purposes of this subparagraph, the least restrictive environment is the California School for the Deaf or nonprofit organizations who specialize in serving DHH infants and children.
 - b) Strategies to improve outcomes for children who are DHH that involve early intensive language services and related specialized services for children who use both or one of the languages of ASL and English to be continued when transitioning from an IFSP to an IEP for children three years of age to the age of entering kindergarten.
 - c) Early intervention language services and related specialized services for children from birth to five years of age, inclusive, who are DHH and are developing proficiency in both or one of the languages of American Sign Language and English may include "related

services” as defined in federal law and regulations, and including, but not limited to, all of the following services:

- i) DHH mentor and coaching services;
 - ii) Language and speech services with a professional equipped with the skills and knowledge to maximize the child’s language and speech development;
 - iii) Specialized DHH services with a teacher who uses both or one of the languages of American Sign Language or English;
 - iv) Interpreting services;
 - v) Audiological services; and
 - vi) Transportation services, including reimbursement to parents or legal guardian for miles traveled.
- a) Expansion of early intensive language services and related specialized services, for children who are DHH, and use of language development milestones for DHH children from birth to five years of age, inclusive, who use both or one of the languages of ASL and English as determined by the child’s IEP or IFSP and that are consistent with the requirements of the law for the development of the language developmental milestones by the California Department of Education (CDE).
 - b) Professional development for preschool teachers, administrators, and paraprofessionals on evidence-based strategies to build capacity to serve preschool children with exceptional needs in more inclusive settings, defined to mean, for DHH pupils, professional development trainings shall be consistent with language development milestones established by the CDE.
- 4) Expands the definition of “Preschool child with exceptional needs” to include children who are receiving IFSP services.
 - 5) Defines “English,” for the purpose of this program, to mean spoken English, written English, or English with the use of visual supplements.
 - 6) States that the Legislature declares that in order for DHH pupils to succeed with an appropriate education, access to language and language development, in both or one of the languages of ASL and English, with intensive language services and related specialized, supplemental services consistent with a pupil’s IEP or IFSP, should be provided from birth to five years of age, inclusive, and beyond so they are ready to learn when they reach kindergarten.

EXISTING LAW:

- 1) Requires that children with disabilities age birth to three years are provided with an IFSP, and that students with disabilities age three to 22 years are provided with an individualized education (IEP).

- 2) Requires each student's IEP team to:
 - a) Consider, among other things, the communication needs of the student, and in the case of a student who is DHH, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode.
 - b) Specifically discuss the communication needs of the student, consistent with "Deaf Students Education Services Policy Guidance" including, among other things, the following:
 - i) The student's primary language mode and language, which may include the use of spoken language with or without visual cues, or the use of sign language, or a combination of both;
 - ii) Appropriate, direct, and ongoing language access to special education teachers and other specialists who are proficient in the student's primary language mode and language consistent with existing law regarding teacher training requirements; and
 - iii) Services necessary to ensure communication-accessible academic instructions, school services, and extracurricular activities.
- 3) Establishes the California School for the Deaf, Northern California (Fremont), and the California School for the Deaf, Southern California (Riverside) and three diagnostic centers, all under the administration of the CDE.
- 4) Establishes the Deaf Student's Bill of Rights which states, among other things, that it is essential that DHH students have an education in which their unique communication mode is respected, utilized, and developed; that students have an education with a sufficient number of language mode peers with whom they can communicate; and that students' parents be involved in determining the extent, content, and purpose of their educational programs.
- 5) Establishes the California Early Intervention Services Act, commonly known as the Early Start Program, to provide various early intervention services for infants and toddlers who have disabilities to enhance their development and to minimize the potential for developmental delays.
- 6) Establishes the SEEIPG, to supplement existing special education resources currently required to be provided pursuant to federal and state law and promote a targeted focus on services and supports being offered in inclusive settings, to the extent practicable. (Education Code (EC) 56836.40)
- 7) Requires that this funding be used to provide services and supports in inclusive settings that have been determined to improve school readiness and long-term outcomes for infants, toddlers, and preschool pupils from birth to five years of age, including all of the following:

- a) Early intervention services, including preschool and supportive services for children from birth to five years of age, inclusive, who are not meeting age-appropriate developmental milestones and are at risk for being identified as eligible for special education and related services. This may include children who received IFSP services but did not qualify for an IEP, and children who have not received an IFSP nor an IEP;
 - b) One-time programs, services, or resources for preschool children with exceptional needs that may not be medically or educationally necessary or required by an IEP or in an IFSP, but which the school district has determined will have a positive impact on a young child;
 - c) Strategies to improve pupil outcomes as identified through the state system of support, including inclusive educational programming that ensures a pupil's right to placement in the least restrictive educational environment;
 - d) Wraparound services for preschool children with exceptional needs not required by federal or state law;
 - e) Expansion of inclusive practices to ensure that preschool children with exceptional needs have access to learn in the least restrictive environment; and
 - f) Professional development for preschool teachers, administrators, and paraprofessionals on evidence-based strategies to build capacity to serve preschool children with exceptional needs in more inclusive settings. Permits this professional development to also include training for teachers, administrators, and paraprofessionals on the development of physical, social, emotional, and academic skills and on developing appropriate IEPs for preschool children with exceptional needs that ensure access to a free, appropriate public education in the LRE.
- 8) Establishes the Inclusive Early Education Expansion Program (IEEEP) for the purpose of increasing access to inclusive early care and education programs. Requires the CDE's divisions for special education and early childhood programs to work collaboratively to administer the program.
- 9) Requires that an LEA applying for the IEEEP to include all of the following information in its grant application:
- a) A proposal to increase access to subsidized inclusive early care and education programs for children up to five years of age, including those defined as "children with exceptional needs," in low-income and high-need communities;
 - b) A plan to fiscally sustain subsidized spaces or programs created by grant funds beyond the grant period;
 - c) The identification of resources necessary to support lead agency professional development to allow staff to develop the knowledge and skills required to implement effective inclusive practices and fiscal sustainability; and
 - d) A description of the special education expertise that will be used to ensure the funds are used in a high-quality, inclusive manner.

- 10) Permits the CDE to reserve up to 1% of program funds to support an evaluation to address improved access, participation, and supports to inclusive early care and education programs and program and child outcomes.
- 11) Requires the CDE to convene a stakeholder workgroup that includes, but is not limited to, representatives from the relevant divisions in the department, the State Department of Developmental Services (DDS), the State Interagency Coordinating Council on Early Intervention, LEAs, appropriate county agencies, regional centers, and resource and referral agencies, with the goal of providing continuous improvement in the inclusion of children with exceptional needs in early care and education settings.
- 12) Requires the CDE's Deaf and Hard of Hearing Unit, and the California Schools for the Deaf, to jointly select language developmental milestones from existing standardized norms, for purposes of developing a resource for use by parents to monitor and track DHH children's expressive and receptive language acquisition and developmental stages toward English literacy.
- 13) Requires the CDE to select existing tools or assessments for educators that can be used to assess the language and literacy development of DHH children.
- 14) Requires the CDE to disseminate the parent resource to parents and guardians of DHH children, and disseminate the selected tools or assessments to LEAs for use in the development and modification of IFSP and IEP plans.
- 15) Requires the CDE to provide materials and training on the use of the tools or assessments, to assist DHH children in becoming linguistically ready for kindergarten using both or one of the languages of ASL and English.
- 16) Requires that, if a DHH child does not demonstrate progress in expressive and receptive language skills, as measured by the educator tool selected or the existing instrument used to assess the development of children with disabilities pursuant to federal law, the child's IFSP or IEP team explain in detail the reasons why the child is not meeting the language developmental milestones or progressing towards them, and recommend specific strategies, services, and programs that will be provided to assist the child.
- 17) Requires that these language developmental milestones be aligned to the CDE's existing infant, toddler, and preschool guidelines, the existing instrument used to assess the development of children with disabilities pursuant to federal law, and the state standards in English language arts.
- 18) Requires the Superintendent of Public Instruction (SPI) to establish an ad hoc advisory committee for purposes of soliciting input from experts on the selection of language developmental milestones for children who are DHH that are equivalent to those for children who are not DHH, for inclusion in the parent resource.
- 19) Requires that, by July 31, 2017, and annually thereafter, the CDE produce a report, using existing data reported in compliance with the federally required state performance plan on pupils with disabilities, on the language and literacy development of DHH children from birth to five years of age, including those who are DHH and have other disabilities, relative

to their peers who are not DHH. Requires the CDE to make this report available on its website.

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. The author states, “As an elementary school teacher for over thirty years, I know how vital the first five years of life is a child's physical, mental, emotional, and social development including the acquisition and development of language; especially for infants and children who are deaf and hard of hearing. This is why resources and services need to be provided as early in a deaf or hard of hearing child's development as possible.

California has the most comprehensive Newborn Hearing Screening Program (NHSP) in order to identify newborns who have a hearing loss as early as a couple of days old. The NHSP allows the families and children to receive a comprehensive and coordinated process in to make sure deaf and hard of hearing children receive early intervention and language exposure through an individual family service plan.

Having a strong early language foundation will empower deaf and hard of hearing children to succeed in kindergarten and through their academic years, careers and in life.”

Two recent state investments promoting inclusive early education. The state has recently made two significant investments in promoting the inclusion of children with disabilities in early learning and care programs:

- Assembly Bill 1808 (Chapter 32, Statutes of 2018), established the Inclusive Early Education Expansion Program (IEEEP) which authorized the State Superintendent of Public Instruction (SSPI) to award grants on a competitive basis for allocation to local educational agencies (LEAs) for the purposes of increasing access to inclusive early learning and care (ELC) programs for children with disabilities, including children with severe disabilities, and for the cost of conducting an evaluation of the IEEEP.
- AB 130 (Committee on Budget), Chapter 44, Statutes of 2021, established the Special Education Early Intervention Preschool Grant (SEEIPG) to supplement existing special education resources currently required to be provided pursuant to federal and state law and promote a targeted focus on services and supports being offered in inclusive settings, to the extent practicable. \$300 million in ongoing funding was provided for this starting in the 2021-22 fiscal year.

Least Restrictive Environment for DHH students. This bill defines the least restrictive environment (LRE), for DHH children served through this program, to mean the California School for the Deaf or nonprofit organizations who specialize in serving deaf and hard of hearing infants and children.

While for most students LRE means educating students with disabilities with their non-disabled peers, state and federal law recognize that for some DHH students the LRE may be a setting in which students are educated with other DHH students.

State and federal law have long emphasized the importance of considering the language and communication needs of children who are DHH. Federal law specifically requires LEAs to “consider, among other things, the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student’s language and communication needs, opportunities for direct communications with peers and professional personnel in the student’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student’s language and communication mode. The Legislative Analyst’s Office (LAO) has noted that “given the difficulty DHH students and their hearing peers have conversing with each other, DHH students in mostly hearing environments can be socially isolated. One strategy to prevent social isolation is to ensure these students attend schools with a critical mass of DHH peers.”

The CDE notes, in their Position Statement on Language Access, that “It is essential that hard-of-hearing and deaf children, like all children, have an education with a sufficient number of language mode peers with whom they can communicate directly and who are of the same, or approximately the same, age and ability level.”

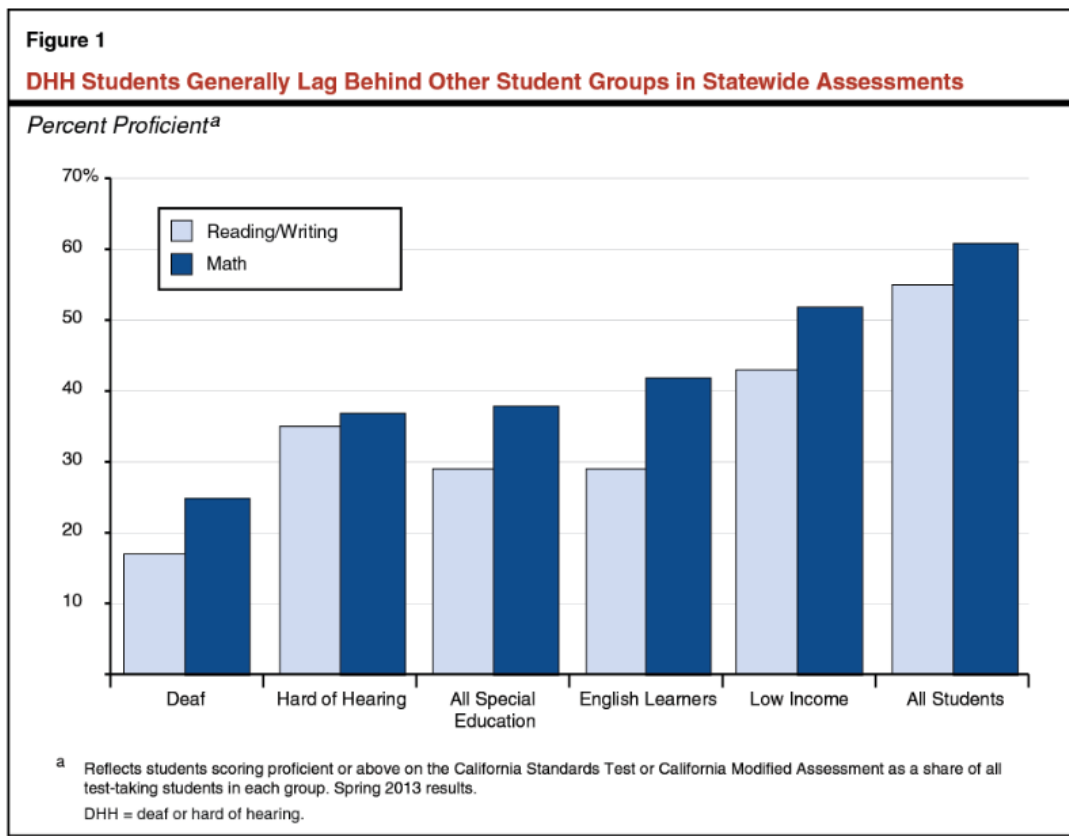
The U.S. Department of Education (USDOE) Office of Civil Rights has affirmed in policy guidance that reaffirmed that “meeting the unique communication and related needs of a student who is deaf is a fundamental part of providing a free appropriate public education (FAPE) to the child...Any setting which does not meet the communication and related needs of a child who is deaf, and therefore does not allow for the provision of FAPE, cannot be considered the LRE for that child. The provision of FAPE is paramount, and the individual placement determination about LRE is to be considered within the context of FAPE.”

Language development among DHH students in California. Historically, many DHH students have struggled academically because of their limited exposure to language early in life. This lack of access to language is sometimes called “language deprivation.”

The LAO notes that “young children develop important cognitive skills by listening and responding to the language that surrounds them every day. As DHH children cannot listen and respond to spoken language as early as their hearing peers, they often develop early language delays that hinder future academic progress. These delays tend to be more pronounced in DHH children born to hearing parents, as hearing parents tend to be less familiar with modes of communications that help DHH children develop in their early years. About 90% of DHH children are born to hearing parents.”

However, research has demonstrated that children who are deaf are identified and enrolled in appropriate Early Start services by six months of age can develop language and cognitive skills commensurate with their non-deaf peers.

The largest data set representing the language development of DHH students on standardized tests comes from a longitudinal study using the Stanford Achievement Test. This research began in 1969 and ran for over thirty years. It measured normative performance of DHH students ages 8 to 18 on reading comprehension tests, and found that, between 1974 and 2003, median performance never exceeded the fourth-grade equivalent for any age cohort. It also noted persistent problems in designing a valid and reliable way to measure the academic performance of DHH students.



Source: LAO, Improving Education for Deaf and Hard of Hearing Students in California, 2016

As shown in the table on this page, data obtained by the LAO through a request to the CDE indicate that, in the 2012-13 academic year:

- DHH students performed relatively poorly on statewide assessments, with fewer than 35% scoring at or above grade level on reading/writing and mathematics;
- Among DHH students, deaf students performed worse than those who are hard of hearing, particularly on assessments of reading/writing; and
- DHH students also generally performed worse on statewide assessments than other groups of students, including students from low-income families, English learners, and other students with disabilities.

More recent data, which would reflect scores on the current summative assessments of ELA and mathematics and the accommodations those assessments offer, is not publicly available.

Data from the Desired Results Developmental Profile, which assesses children ages 0-3 was reported pursuant to SB 210 (Galgiani), Chapter 652, Statutes of 2015. As shown on the next page, these data show that for fall 2018:

- 74.7 % of children who are deaf were at age expectation compared to the sample of same-age children; and
- 92.1% of children who are hard of hearing were at age expectation compared to a sample of same-age children.

Table 2. Infants/Toddlers (Birth to Age 3) Age Expectation Calculations for Language Domain (Fall 2018)

Infants / Toddlers	Not at Age Expectation	Close to Age	At Age Expectation	Total
Deaf	4 (2.0%)	8 (3.9%)	191 (94.1%)	203
Hard of Hearing	8 (0.6%)	30 (2.2%)	1,300 (97.2%)	1,338
All Children with IFSPs	279 (5.3%)	420 (7.9%)	4,612 (86.8%)	5,311

Table 3a. Preschool (3-5) Age Expectation Calculations for Language Domain (Fall 2018)

Preschoolers	Not at Age Expectation	Close to Age Expectation	At Age Expectation	Total
Deaf	32 (14.1%)	65 (28.6%)	130 (57.3%)	227
Hard of Hearing	24 (3.8%)	94 (14.9%)	514 (81.3%)	632
All Children with IEPs Assessed	5,232 (13.3%)	8,063 (20.6%)	25,900 (66.1%)	39,195

Source: SB 210 Report for 2018-19 Academic Year, Desired Results Access Project

Services for DHH children aged 0-5. This bill proposes to add an unspecified sum to the SEEIPG program to serve DHH children aged 0-5.

According to the CDE, there were 2,779 children aged 0-5 identified as Hard of Hearing and 642 children identified as Deaf in the 2018-19 school year (the number of Deaf-Blind children was too small to report under student privacy protections). Among students ages 0-22, a total of 12,871 students identified as DHH (including Deaf-Blind), were reported for the 2020-21 school year, representing 1.63% of all students receiving special education services in that year.

Under current law, the DDS is generally responsible for serving children with disabilities age 0-3. However, LEAs are responsible for children in this age range if they have a hearing, visual, or orthopedic, impairment (but no other eligible condition or developmental delay). From ages 0-3 children's services are delineated in an IFSP, developed by the LEA and family and reviewed at least once every six months. Typically, these plans include authorization for targeted services such as weekly speech therapy sessions and regular home visits from an early education specialist who provides support on a wide range of developmental issues. When they transition to preschool, children's services are delineated in an IEP.

No publicly available state data on DHH language outcomes. While the CDE collects data on the progress of students with disabilities in English language arts in grades 3 - 8 and 11, this data is reported as the performance of all students with disabilities, with no disaggregation by disability. Pursuant to SB 210 of the SB 210 (Galgiani), Chapter 652, Statutes of 2015, data on language development of children with disabilities ages birth to five at state funded child care/development and preschool programs for purposes of reporting to the federal government, is reported disaggregated for DHH children.

Because K-12 academic data is not reported by disability subgroup it is not possible for policymakers and the public to examine the language development of DHH students, or view trends over time, to measure the impact of policy and programmatic changes.

Language Developmental Milestones published by CDE. SB 210 (Galgiani), Chapter 652, Statutes of 2015, required the CDE to develop a parent resource and select existing educator tools for measuring the language and literacy development of DHH children age 0-5 years, and to report annually on the language and literacy outcomes of these children.

The CDE has published language developmental milestones for DHH children aged 0-5 with a Parent Profile designed to help them track their child's language growth. The milestone document encourages parents to discuss their children's progress relative to these milestones with their Early Start or preschool teacher, and to engage in the IFSP or IEP development process when their children are not meeting these milestones. The CDE notes that the Language Milestones are not meant to replace formal assessment of your child's development of language and literacy, but that a parent's observations of their child's progress is important.

Recommended Committee amendments. Staff recommends that the bill be amended to:

- 1) Modify the proposed amendments to section 56836.40(c)(4)(B) as shown, to clarify that services are to be provided consistent with children's IFSPs or IEPs: "Early intervention language services and related specialized services for children from birth to five years of age, inclusive, who are DHH and are developing proficiency in both or one of the languages of American Sign Language and English may include services described in Section 1401(26) of Title 20 of the United States Code and Section 300.34 of Title 34 of the Code of Federal Regulations, and including, but not limited to, all of the following services, consistent with the child's individualized family service plan or individualized education program..."
- 2) Modify the proposed amendments to section 56836.40(c)(3)(B) as shown: "For purposes of this subparagraph, the least restrictive environment ~~is~~ may include the California School for the Deaf or nonprofit organizations who specialize in serving deaf and hard of hearing infants and children."
- 3) Correct references to the State Special Schools for the Deaf by making "Schools" plural instead of singular.

Related legislation. AB 130 (Committee on Budget), Chapter 44, Statutes of 2021, established the SEEIPG, to supplement existing special education resources currently required to be provided pursuant to federal and state law and promote a targeted focus on services and supports being offered in inclusive settings, to the extent practicable.

AB 1808 (Committee on Budget), Chapter 32, Statutes of 2018, established the IEEEP, which authorized the SPI to award grants on a competitive basis for allocation to LEAs for the purposes of increasing access to inclusive early learning and care programs for children with disabilities, including children with severe disabilities, and for the cost of conducting an evaluation of the program.

SB 210 (Galgiani), Chapter 652, Statutes of 2015, requires the CDE to develop a parent resource and select existing educator tools for measuring the language and literacy development of DHH

children ages 0-5 years, and to report annually on the language and literacy outcomes of these children.

AB 455 (Medina) of the 2013-2014 Session would have required the SPI to develop standards in Braille and ASL that are aligned to the common core standards. This bill was held in the Senate Education Committee.

AB 2555 (Torrico), Chapter 245, Statutes of 2008, requires that notice of parent rights and procedural safeguards provided to parents or guardians of pupils with disabilities to include information regarding the state special schools for pupils who are DHH, blind, visually impaired, or deaf-blind.

AB 1836 (Eastin), Chapter 1126, Statutes of 1994, states Legislative intent that each DHH child should have a determination of the LRE that takes into consideration communication and other needs of the student and family.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coalition of Agencies Serving the Deaf and Hard of Hearing (sponsor)
California Association of the Deaf
California Coalition of Option Schools
California Educators of the Deaf
CCHAT Center
CCHAT Sacramento
Center for Early Intervention on Deafness
Disability Rights California
Center on Deafness Inland Empire
Deaf & Hard of Hearing Services Center
Deaf Community Services of San Diego
Deaf Counseling, Advocacy, and Referral Agency
Greater Los Angeles Agency on Deafness
John Tracy Center
NorCal Services for Deaf & Hard of Hearing
Orange County Deaf Equal Access Foundation
Tri-County GLAD
Weingarten Children's Center

Opposition

None on file

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