

IDEA Law Summary Information

The information below has been derived from sections of the law, Office of Special Education Program comments and discussion provided at <http://idea.ed.gov/explore/home>. The guidance provided in that website helps clarify the intent of IDEA and may be useful to professionals and parents alike who are trying to advocate appropriate services and supports for children with hearing loss. Another valuable and brief summary is at <http://www2.ed.gov/about/offices/list/ocr/docs/hq9806.html>

NOTE: the information below this does NOT constitute legal advice.



Defining Hearing Loss

NOTE: State may have different definitions of hearing loss categories. State definitions typically provide more specificity to assist teams in determining which students to determine eligible for specialized instruction.

As defined by IDEA: Deafness means a hearing impairment so severe that a child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

As defined by IDEA: Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but is not included under the definition of "deafness."

The term adverse educational effect does NOT mean that a child has to be failing in school to receive special education and related services. According to IDEA, states must make a free appropriate public education available to "any individual child with a disability who needs special education and related services, even if the child has not failed or been retained in a course or grade, and is advancing from grade to grade." [§300.101(c)(1)]. The OSEP clarified that "it remains the department's position that the term 'educational performance' as used in the IDEA and its implementing regulations **is not limited to academic performance**. Whether a speech and language impairment adversely affects a child's educational performance must be determined on a case-by-case basis, depending upon the unique needs of a particular child and **not based only on discrepancies in age or grade performance in academic subject areas** (Section 614(b)(2)(A) of IDEA and the final regulations at 34 CFR Section 200.304(b) state that in conducting an evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information.." Functional and developmental information for D/HH children includes consideration of expanded core curriculum areas that include such topics as self-advocacy, speaking/listening skills, ASL, etc.

Special Considerations – only for children with Hearing Loss



Unlike the other 12 categories of special education disabilities, the IEP teams of children who are deaf or hard of hearing are held responsible by IDEA for taking the following into consideration:

iv) Consider the communication needs of the child, and in the case of the child who is deaf or hard of hearing, consider the language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode, and (v) Consider whether the child requires assistive communication devices and services. 34 CFR 303.324(2)

Thus, the “basic floor of educational opportunity” begins with equitable access to communication so what is being taught can get through – so he has the same opportunity to learn as any typical child.

What if a child with hearing loss is made ineligible for specialized support?

The local education agency (school or district) is accountable for children it finds ineligible for special education and/or 504 supports. **If those students do NOT make adequate progress – defined as one year's growth in one year's time – parents can take legal action** to prove the school's liability which could result in an award of compensatory damages for the family.*

In *Deal v. Hamilton Board of Education (6th Circuit, 2004)*, the court ruled that “meaningful educational benefit must be gauged by the child's potentialities.” The takeaway message is to know what the student's potential is – not necessarily her maximum potential, but a level of achievement that is measured in context to her ability to become proficient with the standards that have been identified for her grade level. Since IDEA requires that the IEP be reasonably calculated to enable children in mainstreamed settings to achieve passing marks and pass from grade to grade, it can be construed that passing from year to year assumes a child is, at the very least, making one year's growth in one year. This points to the crucial information the IEP team must have about the student's cognitive ability, and the instructional strategies and communication access supports that will succeed in delivering the curriculum so that she can benefit *meaningfully* from her education.*

*From: Johnson, DesGeorges, & Seaver (2013). Educational Advocacy for Students who are Deaf or Hard of Hearing. Hands & Voices, CO.

Schools are responsible for ensuring effective communication

For more information go to the [Accommodations via a 504 Plan and/or the Americans with Disabilities Act \(ADA\)](#) webpage.

MATERIALS TO SHARE WITH THE SCHOOL ADA COORDINATOR OR TEAM

- Background information for administrators, ADA coordinators, families: [Cascading Impact of Hearing Loss on Access to School Communication](#)
- [Accessibility Considerations worksheet \(ADA\)](#) for Students with Hearing Loss

From Supporting Success for Children with Hearing Loss <http://successforkidswithhearingloss.com/idea-law-summary/>