

## The Right to an Appropriate Program of Special Education Support



The special education pendulum has swung away from segregated settings where students with special needs minimally mixed with ‘regular’ students in the 1980s to the current full inclusion model, where direct 1:1 instructional services are becoming rare. Students with hearing loss are already at high risk for ‘academic slippage’ due to their inability to completely access classroom communication without appropriate accommodations and supports. The move from pull-out services to provide intensive teaching in reading, language, and self-advocacy, places our students at even higher risk for developing increasing academic delays over time.

In light of this, I found a [court case from 2002](#) that gave me pause, and hope. In Kevin T. V. Elmhurst Comm. School District No. 205 Kevin, who had a learning disability and ADHD, had received twelve years of special education (age 6-18). Kevin had average intellectual potential but his reading, math and writing skills were at the 3rd to 5th grade levels despite receiving special education services. Triennial assessments over 9 years showed that his IQ dropped nearly 20 points. Scores on academic achievement tests also decreased significantly over a 6-year period. The school was aware of his poor reading scores but did not make IEP changes to address his reading difficulties. It was stated multiple times that he should have been assessed for, and given, assistive technology (AT), but the district did not consider, let alone provide Kevin, with AT. Modifications or accommodations during state testing procedures were not included on his IEP. Although Kevin’s skills were deficient, at the end of his 12<sup>th</sup> grade year while receiving all Fs, he graduated with a high school diploma. Per this court decision, “Automatic grade promotion does not necessarily mean that the disabled child received a FAPE or is required to be graduated.”

At the urging of the parents, the district transferred Kevin to a specialized day school where he received intensive instruction. In one year, Kevin made about 3 years of progress in reading, math, and writing. His parents then decided to bring the case to court. The court ruled that Kevin receive compensatory education. The school district was required to reimburse the parents for tuition paid to the specialized school and for his continued education at the school.

### Where is the silver lining in this case?

First, schools can and should be held accountable when students with disabilities are not making sufficient progress. Indeed, the [March 22, 2017 US Supreme Court decision](#) rejected the standard of minimal progress. For children fully integrated in the regular classroom, the IEP should be reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.

Second, a free and appropriate public education (FAPE) for students with disabilities includes specially designed instruction to meet the unique needs of the child. Present levels of performance and continuous performance monitoring are critical elements for determining student needs, and also identifying if the specially designed instruction is truly meeting the needs of the child. Children who display hearing loss as their only disability do not have a learning disorder. Issues in education are related directly to the access barriers caused by the hearing loss. These barriers must be accommodated per ADA and an IEP be suitably designed to close the existing gaps in learning and support the student’s ability to keep pace in the classroom.

Third, intensive instruction by persons who truly understand the unique learning needs of the specific disability is likely to result in substantial progress to close achievement gaps. If our students are 1+ years delayed in their achievement, it is unlikely that they will close this gap nor keep up with the current pace of learning UNLESS an appropriately intense program of specialized instruction – by a teacher of the deaf/hard of hearing - supports this progress.

### Services need to be appropriate if a child with hearing loss is to receive FAPE.

Appropriate:

Accommodations to optimize access to school communication

Assessment to identify the learning needs unique to students with hearing loss

Intensity of specialized instruction tailored to meet these unique needs by a knowledgeable teacher with specialty in working with students with hearing loss

Continuous progress monitoring to measure progress in closing learning gaps

Revising IEP services and accommodations/supports to support GROWTH.