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deaf children with disabilities: rights under the IDEA

By Barbara Raimondo

Parents of children who are deaf and who have disabilities often face barriers in ensuring that their children receive the services they need. Some of these barriers include lack of awareness about deafness-disability constellations, shortages of professionals knowledgeable about how deaf children learn or the impact of the disability on deaf children's learning, and lack of research-based recommendations on effective teaching methods. Regardless of the presence of barriers, each state's education system is required to serve those children appropriately.

According to one study, approximately 39 percent of deaf children surveyed have additional "educationally relevant" conditions (Gallaudet Research Institute, 2008). It is clear that deaf children with additional disabilities constitute a large minority of deaf children. This article provides information on how the Individuals with Disabilities Education Act (IDEA) Part B applies to this category of children. Part B covers children ages 3 through 21. Part C is the section of the law that applies to children under age 3. It will not be addressed here, although many concepts in Part B and Part C are similar.

Eligibility

A child is eligible to be served under the IDEA if he or she has a disability or disabilities that fall into one or more of 13 specified disability categories and, because of this disability, requires special education and related services. The categories are:

- Autism
- Deaf blindness
- Deafness
- Emotional disturbance
- Hearing impairment
- Mental retardation
- Multiple disabilities
- Orthopedic impairment
- Other health impairment
- Specific learning disability
- Speech or language impairment
- Traumatic brain injury
- Visual impairment, including blindness

IDEA requires that a free appropriate public education be provided to eligible children. This means that schools must provide special education and related services designed to meet the individual education needs of students with disabilities as adequately as the needs of nondisabled students are met (U.S. Department of Education, September 2007).

- Special education is specially designed instruction to meet the unique needs of a child with a disability.
- Related services are those required to assist a child with a disability to benefit from special education. They include transportation, interpreting, parent counseling and training, speech-language pathology and audiology, therapeutic recreation, physical and occupational therapy, school nurse services, and others.

IDEA requirements apply to all children who are eligible for IDEA services regardless of their type(s) or severity of disability. IDEA emphasizes individualization and meeting a child’s unique needs. It requires that the course of a child’s education be set out in an Individualized Education Program (IEP). The sections below describe key parts of a child’s IEP.

Evaluations

A child’s IEP starts with identification of his or her needs through evaluations and assessments. Schools must gather information on the child’s functional, developmental, and academic areas. The child must be assessed in all areas related to his or her suspected disabilities. This includes, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

Schools must use various tools and strategies for determining a child’s functional, developmental, and academic needs. Evaluations and assessments must be administered by trained and knowledgeable personnel. This means that for a deaf child, special care must be taken to ensure that the specialist performing the evaluation is able to communicate appropriately with the child.

Information collected from evaluations is used to create a profile of the child’s Present Levels of Performance.

Present Levels of Performance

The IEP must include a statement of the child’s Present Levels of Performance, including academic achievement and functional performance. This statement comes from assessments and evaluations. It should include a description of how the child’s disability(ies) affects his or her involvement and progress in the general education curriculum. Does the child’s disability make it difficult for him or her to pay attention for long periods of time? Does the child’s disability dictate the necessity of classroom accommodations? It is important to make a link between the child’s disability and the direction of the IEP. The IEP is meant to respond to the needs of the child based on his or her disability. IDEA defines the general education curriculum as “the same curriculum as for nondisabled children.” For preschool-aged children, it should include how the disability affects the child’s participation in appropriate activities.

Present Levels of Performance must be measurable. While a professional may believe that a child is “doing well” or

“lagging” in a particular area, personal opinions are difficult to substantiate and are interpreted differently from person to person. It is important that the Present Levels of Performance are documented in such a way that anyone reading them would understand them.



Present Levels of Academic Achievement

How is the child doing in such areas as reading, language arts, math, science, and history? At what level is he or she performing? Some examples of present levels of academic achievement are:

- “Tracy scores at the 3.2 grade level on the ‘Math Key’ assessment.”
- “Della solves fifth grade-level math word problems with 50 percent accuracy.”
- “Given 100 high-frequency words from the fourth grade curriculum, Dana can accurately identify 42.”

Present Levels of Functional Performance

The term “functional” is meant to be used in the context of routine activities of everyday living. Therefore it could include activities such as self-care, the ability to follow routines, social skills and the ability to follow social cues, and the like. IDEA



does not give specific examples of functional performance, and it does not include examples of how functional performance should be measured. However, measurement of functional performance should be based on the needs of the child. Some examples of present levels of functional performance are:

- “During transition times, Dabney tantrums 50 to 60 percent of the time.”
- “Tawanda turns in three out of five homework assignments.”
- “With peers or professionals in school, Colleen makes eye contact 10 percent of the time.”

These statements serve as a starting point for the child’s annual goals.

Annual Goals

Once you know where you are starting from, measurable annual goals, including academic and functional goals, should be written. The annual goals must be designed to meet the child’s needs that result from his or her disability, enable him or her to be involved in and make progress in the general education curriculum, and meet the child’s other educational needs that result from his or her disability. These goals should be aligned with the general curriculum and the academic standards that are applied to all children.

Using the examples from above, some measurable annual IEP goals might be:

- “By the end of the school year, Tracy will score at the 4.8 grade level as measured by the ‘Math Key’ assessment.”
- “Della will solve sixth grade-level math word problems with 70 percent accuracy.”
- “Given 100 words from the fifth grade curriculum, Dana will accurately identify 75.”

In these cases we have set measurable goals of more than one year’s progress in one year’s time. While IDEA does not specify that IEP goals must be written this way, it does require schools to ensure that children with disabilities reach the grade level benchmarks set for all students under the No Child Left Behind Act. If a child starts out behind, the only way he or she will catch up is by making more than one year’s progress in one year’s time. Some examples of measurable functional goals are:

- “During transition times, Dabney will tantrum no more than 10 percent of the time.”
- “Tawanda will turn in 95 percent of her homework assignments on time.”
- “With peers or professionals in school, Colleen will make eye contact 50 percent of the time.”

The ability to achieve academic goals is tied to progress towards functional goals for many children with additional disabilities. The IEP must adequately address functional goals. Like academic goals, functional goals should be measurable.

The IEP also must include a description of how the child’s progress toward meeting the annual goals will be measured and when periodic reports on his or her progress toward meeting the annual goals (such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards) will be provided.

Services

The IEP must include a statement of the special education and related services and supplementary aids and services to be provided to the child or on behalf of the child. As mentioned above, special education is specially designed instruction to meet the unique needs of a child with a disability. Special education can take the form of a different way of teaching reading, a particular approach to reinforcing math concepts, or other methods of presenting material to a child that is tailored to his

or her strengths. Related services are those required to assist a child with a disability to benefit from special education. Supplementary aids and services are provided for the purpose of enabling children with disabilities to be educated with nondisabled children to the maximum extent appropriate. Supplementary aids and services could also be provided to staff who may need training or support in meeting the child's needs. For example, training in the use of a child's communication device could be a supplementary service.

There can be overlap among these three categories. For example, the pacing of presentation of material could be considered specially designed instruction or could be considered a supplemental aid or service.

Regardless of how a service is categorized, it is essential that the child receives what he or she needs in order to have his or her educational and functional needs met. Services must be designed to help a child meet his or her annual goals.

The IEP must also include the projected date for the beginning of the services and the expected frequency, location, and duration of those services and modifications.

For the first IEP in effect once a child turns 16, transition services and postsecondary goals must be included. These must be updated annually. IDEA allows students to be served through age 21 if the IEP team determines that is necessary. This is an important part of the IEP for students because it ensures that there is a plan for the student once he or she completes high school. It is an especially critical part of the IEP for students with disabilities who will continue to need community and vocational rehabilitation services. These linkages with programs outside of the school system should be made during the high school years so the student has a smooth transition after leaving school, without any gap in services. Some advocates recommend starting transition services no later than age 14 although the law does not require this.

This part of the IEP must include:

- appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- the transition services (including courses of study) needed to assist the child in reaching those goals.

The U.S. Department of Education (2007, January) has made clear that this requirement applies “whether or not the child's skill levels related to training, education, and employment are age appropriate. The IEP team must, however, develop the specific postsecondary goals for the child, in light of the unique

needs of the child as determined based on age appropriate transition assessments of the child's skills in these areas.”

Placement

After the child's needs, goals, and services have been determined, it is time to decide what educational setting is most appropriate for him or her. The placement chosen should be one in which the IEP goals can reasonably be expected to be met. Parents are part of the group that decides placement.

The IEP must include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in other activities. For children who are placed in specialized settings, such as a school for the deaf, this is where the IEP team would document the reason why that is the appropriate setting.

The child must be placed in the least restrictive environment (LRE) for him or her. The law defines this as:

To the maximum extent appropriate, children with disabilities must be educated with children who are not disabled. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment can occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

However, the LRE for a deaf child may be different from the LRE for a child who is not deaf. The U.S. Department of Education (1992) has provided guidance as to what LRE means for a deaf child: “[R]egular educational settings are appropriate and adaptable to meet the unique needs of particular children who are deaf. For others, a center or special school may be the least restrictive environment in which the child's unique needs can be met.” Center or special schools include county-based regional programs and schools for the deaf.

The U.S. Department of Education also said that there are cases when the nature of the disability and the individual child's needs dictate a specialized setting. A specialized setting can provide a structured curriculum or special methods of teaching. The U.S. Department of Education (1992) noted, “Just as placement in the regular educational setting is required when it is appropriate for the unique needs of a child who is deaf, so is removal from the regular educational setting required when the child's needs cannot be met in that setting with the use of supplementary aids and services.”

IDEA makes it clear that no one setting is appropriate for all children and that placement decisions must be based on the unique needs of each student.

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Special Factors

IDEA requires IEP teams to consider “special factors” in the development of a child’s IEP. These include:

- In the case of a child whose behavior impedes his or her learning or that of others, the use of positive behavioral interventions and supports shall be considered.
- In the case of a child with limited English proficiency, the language needs of the child should be considered.
- In the case of a child who is blind or visually impaired, instruction in Braille and the use of Braille should be provided unless the IEP team determines that type of instruction is not appropriate for the child.
- In the case of a child who is deaf or hard of hearing, his or her language and communication needs, opportunities for direct communications with peers and professional personnel in his or her language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode, should be considered.
- Whether or not the child needs assistive technology devices and services should be considered.

Tips for Parents

- Be familiar with your child’s evaluations whether they are done by school personnel or outside the school system. IEP teams are required to consider information from outside evaluations, so if you have had your child evaluated outside the school district, you may share that information with other members of the IEP team.
- Finding trained and knowledgeable personnel can be challenging for school districts. There simply are not enough professionals qualified to do this in every area of the country. School districts may have to look outside the district for expertise. This is permitted under IDEA.
- Parents have a role in helping document their child’s needs. As a parent, you should let teachers and other members of the IEP team know what you observe of your child at home and in other settings. When you are with your child, you may wish to take notes on what he or she is doing functionally, developmentally, and academically. Take note of your child’s strengths. Think about your areas of concern. Prepare for IEP discussions ahead of time. Parents have valuable input on the needs and abilities of their child.

Learn about your school district’s general education curriculum. The IEP should serve as a mechanism to access this curriculum. IEP goals should reflect this.

- Don’t wait until the IEP meeting if you have questions or concerns. It is a good idea to stay in touch with your child’s teachers and service providers throughout the school year,

not only at IEP time. Try to establish a good rapport early on.

- Review the IEP progress reports that are sent home. Under IDEA, schools are required to report to parents on progress of IEP goals and objectives at least as frequently as progress is reported for all children. Often, this means you will receive an IEP progress report each time you receive a grade report. Contact the school if you have questions or concerns about the information in the progress report.
- The IEP can be changed if needed. While IEPs should be written to be valid for a year, they may be modified at any time if the IEP team agrees.
- Don’t be confused by use of the terms “primary” or “secondary” disability. Parents have reported that their child’s school has categorized one disability as a primary disability and another as a secondary disability, then proceeded to provide services based on the first but not the second disability. Providing services this way does not comply with IDEA. The terms “primary disability” and “secondary disability” do not appear in IDEA. Further, IDEA requires the IEP to address all the educational needs that result from the child’s disability(ies). Thus, whether one thinks of one disability as primary and the other as secondary, the child’s needs must be met. Finally, the notion that IDEA contemplates refusing the provision of some services on the basis that the child is receiving other services contradicts the idea of a free appropriate public education.

References

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