

Educational Policy Influences on Educational Audiology: A Review of the Past Decade

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Educational policy can take several different forms ranging from laws, regulations, and court decisions to professional standards and decisions by local and state administrators and school boards. When education laws are enacted, they typically reflect the goals, principles, and outcomes of these various policy groups. Implementing regulations are subsequently developed and adopted to define how the laws are to be implemented. These regulations also provide further clarification by stipulating strategies and services required to meet the intent of the law. Case law adds a further layer of legal interpretation when there is ambiguity or disagreement as to the legal intent or the implementation. Professional standards serve as guidance that also may be reflected in legislation or regulations that can be enforceable as law. While policy decisions by local school systems have to be in accordance with state and federal regulations, litigation usually begins at the local level where it impacts an individual student. However, the local policies typically remain in effect unless challenged under state or federal law. With current trends related to student demographics and increasingly tight education budgets, it is important to be knowledgeable about educational policy decisions that can impact audiology programs and services in the schools. This article provides an overview of policy actions from 2000-2010 that are most likely to influence the practice of educational audiology now and in the near future.

General Education Policy

Although special education policy has provided guidance through definitions and regulations for past and current educational audiology practice, policy decisions within the realm of general education are clearly relevant for the future. With that trend in mind, this review begins with significant issues from general education policy that impact services for students with hearing challenges.

The No Child Left Behind Act (NCLB)

The Elementary and Secondary Education Act of 1965 (ESEA) is a United States federal statute initially enacted on April 11, 1965. The government has reauthorized the ESEA every five years since its inception, and the current reauthorization of ESEA is the No Child Left Behind Act of 2001 (NCLB, 20 U.S.C. § 6301 *et seq*). Primary goals and principles targeted by NCLB include:

- Stronger accountability for results
- Performance goals for states and local education agencies
- Increased flexibility and local control
- Expanded options for parents
- Emphasis on teaching methods that have been proven to work

Implementing regulations for NCLB, adopted in 2008, provided additional clarification regarding assessment, teaching requirements, accountability, and reporting of progress. However, concerns for students with hearing and listening problems that have relevance for educational audiologists remained, such as classroom accommodations, response to intervention, and provision of services to facilitate access to general education for students with disabilities who are not placed in special education. Educational policy related to these areas is discussed in the following sections. More detailed information on the No Child Left Behind Act and its regulations can be found at www.ed.gov/nclb/landing.jhtml

Response to Intervention

This provision has its roots in NCLB to improve classroom instruction. Response to Intervention (RtI) is intended to increase supports for students with specific learning disabilities and behavior problems by increasing the quality of instruction or intervention (e.g., requiring that states establish a process for identifying needs based on students' responses to scientific, research-based intervention). This process requires that before a referral to special education is made, an increasingly intensive series of interventions be provided, and the subsequent progress documented, to assure that the learning problem exhibited by the student is not a result of lack of appropriate instruction. While the RtI process

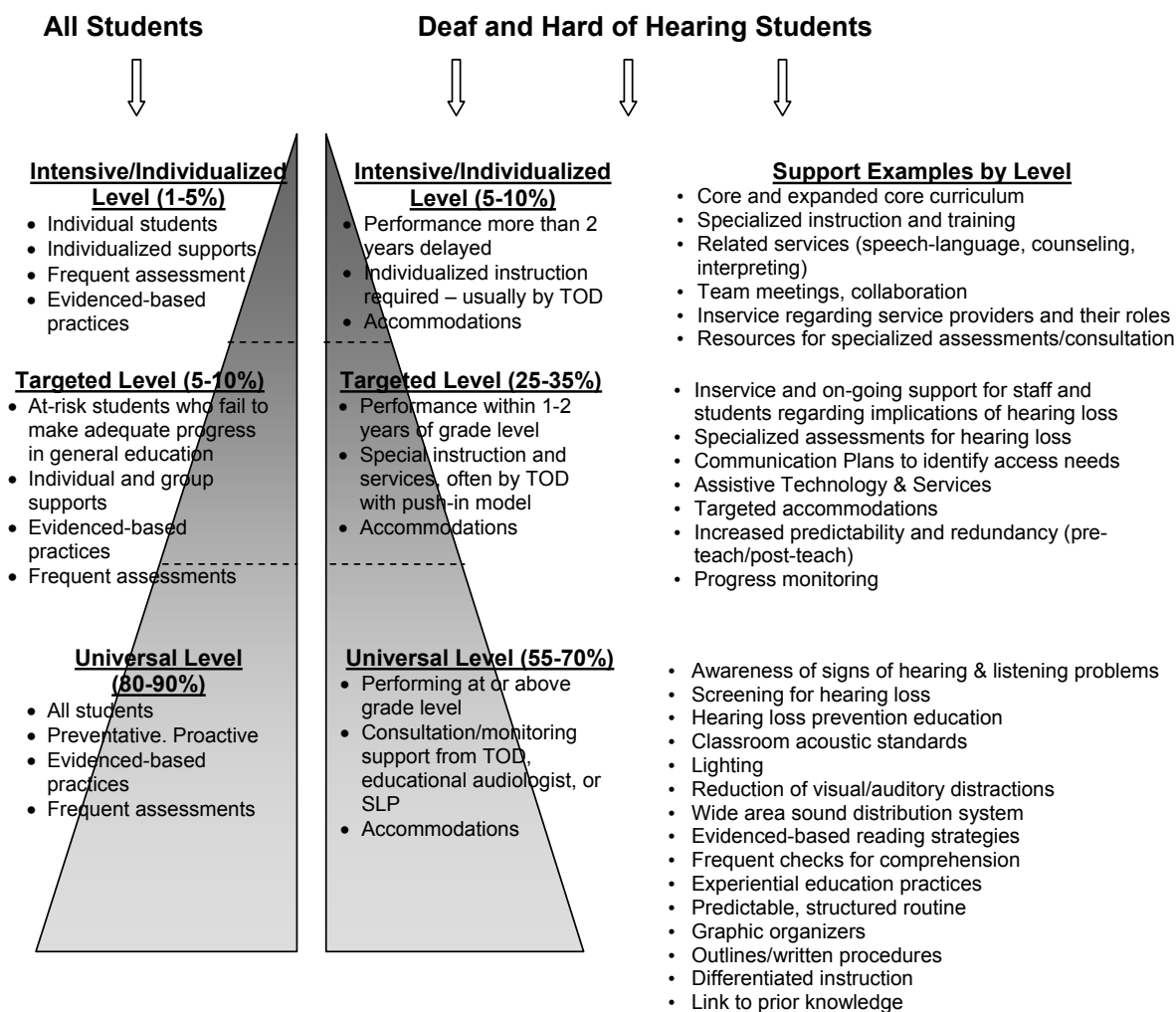


Figure 1. Response to Intervention model adapted to students with hearing loss with suggested sample supports at each level.

is not designed for students with sensory, cognitive, or physical disabilities, it does have components that benefit instruction for all children in the general education classroom. These include access to better instruction (scientifically, research-based interventions), access to frequent monitoring procedures to identify how a child is responding to these interventions, and access to instruction that is provided by qualified personnel.

The multi-tiered RtI model should integrate the resources of general education, special education, gifted education, as well as any other school student support programs. For educational audiologists, RtI provides a framework to serve students at all tiers of intervention, regardless of whether they have an IEP, a 504 Plan, or neither. Given the growing number of children with hearing loss who are not eligible for special education due to adequate school performance, the RtI model provides a mechanism to support access and learning needs outside of special education. The increased emphases on research-based interventions that benefit students within the multiple tiers of the model also benefit children with

hearing loss and listening problems. This emphasis on effective practices requires frequent monitoring of student progress so that adjustments can be made as soon as it is determined that a student is not making consistent progress.

Figure 1 illustrates a tiered model of services comparing RtI for all students to a suggested model of services for students with hearing loss. Tier 1 describes supports and services for students performing at or above grade level, emphasizing the same prevention proactive approach as Tier 1 for RtI. The goal for these students is to provide supports that will sustain their performance. Tier 2 targets students who are performing within one to two years of their grade level, and Tier 3 targets students who are more than two years delayed. Within this model, interventions such as appropriate classroom acoustics and use of classroom audio distribution systems can be implemented at the Tier 1 core instruction level. Tier 2 adds interventions such as special flexible seating or use of a personal FM system, and Tier 3 adds traditional supports that are typically part of an IEP. Ideally, to support the

listening needs of students, audiologists should be involved with school multidisciplinary teams at each of these tiers to ensure that appropriate interventions and accommodations are instituted. IDEA permits states to use up to 15% of their special education funds to support RtI services through Early Intervening Services (EIS). Participation in this program is determined by each state department of education agency. Each state can determine how related services personnel (including audiologists) are involved in the RtI process, either through EIS or some other mechanism. Local school districts may also recognize the benefits of a model founded on prevention rather than failure and provide flexibility for its related services staff to support student at all levels. IDEA does not specifically prevent audiologists from providing support to students who are not in special education. As the use of the school-wide RtI model increases, more will be learned about how general education and special education supports are integrated throughout the tiers of intervention to support students with hearing loss.

Classroom Acoustics

The Architectural and Transportation Barriers Compliance Board (Access Board) received a petition in 1997 from a parent of a child with hearing loss, stating that poor classroom acoustics constituted an architectural barrier to their child's educational opportunities. As a result of this petition, the Access Board and the Acoustical Society of America convened the Classroom Acoustics Working Group to develop guidelines. These guidelines were approved in 2002 as a standard under the American National Standards Institute (ANSI) and Acoustical Society of America (ASA), with the goal that the standard would be adopted by the International Code Committee (ICC) as part of the International Building Code (IBC). An additional acoustical standard was adopted in 2009 for relocatable classrooms (ANSI/ASA, 2009/10). In response to ICC questions, the guidelines were revised as a standard for permanent classrooms and resubmitted to the ICC in 2010. When the standard was not adopted, a petitioning process to the Access Board led to their commitment to develop rulemaking for classroom acoustics standards under the ADA. This process is currently underway. The current standards are located in Text Box 1. The revised standard

Text Box 1

Recommended Classroom Acoustic Standards for Core Learning Spaces <10,000 ft³ volume (ANSI/ASA S12.60-2009, 2010)

Permanent Classrooms: Ambient Noise Level: 35dBA/C; Reverberation Time: .6 seconds*

Relocatable Classrooms: Ambient Noise Level: 41dBA/C, 38 dBA/C by 2013, 35 dBA/C by 2017 Reverberation Time: .5 seconds*

*Note: These core learning spaces shall be readily adaptable to allow reduction in reverberation time to .3 seconds to accommodate children with special listening needs.

includes a caveat for children with special listening needs that require a lower reverberation time (RT) be used. Audiology currently lacks a clinical test for identifying individual RT needs. Until such time as a test is developed with norms, a .3 RT for children with hearing loss should be recommended based on current research (Iglehart, 2009; Neuman, Hajicek, & Rubinstein, 2010)

Classroom acoustics is a foundational responsibility for audiologists in promoting classroom listening. Consider these tendencies: children with hearing and listening problems are primarily educated in regular classrooms, high noise and reverberation levels continue to exist in classrooms, and the use of classroom audio distribution systems as a band-aid to poor room acoustics is growing. These combined issues result in an increase in students that are learning in classrooms with acoustical conditions that may actually exacerbate their listening abilities.

Special Education Policy

As stated initially in this article, audiology has been included in special education legislation prior to the current decade. The following sections on IDEA 2004, ADA 2008, and related legal decisions impacting educational audiology provides an overview of relevant educational policy actions from 2000-2010.

The Individuals with Disabilities Education Act (IDEA 2004)

The Individuals with Disabilities Education Act (IDEA 1997) was reauthorized in 2004 as the Individuals with Disabilities Education Improvement Act and is referred to as IDEA 2004 (20 U.S.C. § 1400 *et seq*). This reauthorization emphasized increased accountability and improved outcomes for students with disabilities and stressed alignment with the educational intents of the NCLB. IDEA 2004 also included an increased emphasis on early intervention, literacy, and research-based instruction. A trend toward increased service to students with disabilities in general education settings is evident throughout many portions of this Act. IDEA 2004 is divided into five parts:

- Part A – General Provisions
- Part B – Assistance for Education of All Children with Disabilities
- Part C – Infants and Toddlers with Disabilities
- Part D – National Activities to Improve Education of Children with Disabilities
- Part E – National Center for Special Education Research

Educational audiology is most involved with Parts B and C, and changes in other parts are not included in this review. Final regulations for Part B were adopted in 2008, and although regulations were drafted for Part C, they were withdrawn in 2009 in anticipation of initiating the Act's reauthorization cycle. As a result, there were no new regulations for serving students from birth to 3 years of age that occurred during the past decade.

Text Box 2**PART B RELATED SERVICES 34CFR300.34**

Exception; services that apply to children with surgically implanted devices, including cochlear implants.

- (b) Exception: services that apply to children with surgically implanted devices, including cochlear implants.
- (1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g. mapping), maintenance of that device, or the replacement of that device.
 - (2) Nothing in paragraph (b)(1) of this section
 - (i) Limits the right of a child with a surgically implanted device (e.g. cochlear implant to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.
 - (ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or
 - (iii) Prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning properly, as required in §300.113(b).

The definition of audiology as a related service under Part B and Part C did not change in IDEA 2004 and has been used as a basis for EAA's position statement, *Recommended Professional Practices for Educational Audiologists*, adopted in 2009 (see www.edaud.org). However, significant additions were made in the Part B regulations to clarify requirements related to serving students who use cochlear implants. Under §300.34 Related Services, an exception was added (see Text Box 2).

Two other sections of the Part B regulations (§300.113 Routine checking of hearing aids and external components of surgically implanted medical devices, and §300.5 Assistive technology device) were modified to ensure that school systems were *not* responsible for the maintenance or replacement of the internal portions of a cochlear implant, but *were* responsible for daily checks of the external portions to ensure that the device was

Text Box 3**Consideration of special factors 34CFR300.324(2)(iv)**

...the IEP Team shall consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing consider the child's language and communication needs, opportunities for direct communications 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 consider whether the child needs assistive technology devices and services. (Authority: 20 U.S.C. §1414(d)(3)(B)(iv, v)

functioning properly. These changes in the law resulted from case law decisions (discussed below) regarding services to students who use cochlear implants and serve as an example of how court decisions can influence legislation.

An additional issue that can impact home use of hearing assistance technology is addressed in IDEA 2004. Regulations Section 300.106 Assistive technology (b) states, "On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE." (Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(B)(i). IDEA 2004 also includes a new section on special consideration by the IEP team when developing IEPs for students, including those who are deaf or hard of hearing (see Text Box 3).

New regulations allowing 3-year re-evaluations (20 U.S.C. § 1414 (a)(2)(B)(ii) and the requirement for team member attendance at IEP meetings, unless excused (20 U.S.C. § 1414 (d)(1)(C)(i-iii), are two issues that have generated much discussion among educational audiologists. Readers are encouraged to check with their state's implementing regulations for IDEA 2004 to see how these regulations are being interpreted for their specific situations. Recommendations documented in the student's IEP are key to both of these issues, and whenever there is a concern that a student needs to be seen more often than is the norm, the educational audiologist should make every effort to be an active participant in the IEP process.

One last area of interest to educational audiologists is the addition of the section on early intervening services. This new section in IDEA 2004 states that school districts may use up to 15% of their Part B funds to provide services for students who need academic and behavioral assistance, but have not been identified as needing special education services (20 U.S.C. § 1413(f). This, again, is an attempt to prevent placement in special education programs for students whose academic challenges could be addressed within the general education environment, and, unlike Section 504, the early intervening section does provide for some financial support. Additional information on these topics and others is available through Topic Briefs prepared by the Office of Special Education Programs (OSEP) that can be accessed at www.ed.gov/policy/speced/guid/idea.

The Americans with Disabilities Act (ADA)

One additional piece of relevant legislation was amended during the past decade. The ADA was enacted in 1990 to provide protection from discrimination based on disability. Modeled after the Rehabilitation Act of 1973, the ADA replaces the word "handicap" with "disability" and pertains to all employers, not just those receiving federal funds. Covered disabilities include physical

conditions affecting mobility, stamina, sight, hearing, and speech as well as conditions such as emotional illness and learning disorders. The Act includes five sections (called Titles) covering employment, public services and transportation, public accommodations and commercial facilities, telecommunications, and miscellaneous provisions. The ADA was amended in 2008, as the Americans with Disabilities Act Amendments Act (ADAAA), providing an expanded interpretation of disability. The requirements of ADA for schools are the same as Section 504 of the Rehabilitation Act of 1973 and, therefore, while these amendments did not require the U.S. Department of Education to amend its 504 regulations, the expanded definition of disability may result in an increase in the number of 504 plans whose needs may have been previously handled under health care plans. In addition, as a result of the ADAAA of 2008, Section 504 clarified that determinations must be based on the child’s disability as it presents itself without mitigating measures. The ADA Accessibility Guidelines (ADAAG) serve as the basis for standards issued by the Departments of Justice and Transportation to enforce the law. Schools must comply with the requirements of ADA by providing appropriate accommodations and accessibility for all individuals with disabilities, including its employees and the public. Additional information on the ADA can be accessed at www.ada.gov, the U.S. Department of Justice ADA home page.

Case Law

Case law is determined through the rulings of a court, from local circuits up to the Supreme Court. The U.S. Supreme Court rulings determine the law of the land. The next highest level is the U.S. Court of Appeals, whose decisions are binding over the courts in states contained within their district. While not binding on states outside the district, decisions from U.S. Courts of Appeals may be used as “persuasive authority” in cases being argued in other circuits. Local courts and due process decisions can set

precedents and be quoted in other case briefs. The Office of Civil Rights (OCR) rules on cases that are filed through their office. These rulings also have national implications. The U.S. Department of Education provides further legal interpretation through the Office of Special Education Programs (OSEP). Clarification and interpretation of federal regulations are made through letters of policy clarification written in response to specific inquiries made by state education officials, parents, or other pertinent parties.

The following case summaries are presented in order of the year of the latest court ruling available. Where multiple citations are provided, more than one source was used for background information and/or there were several levels of appeal for the case. See Text Box 4 for a list of acronyms used in these case summaries.

Cases Filed Under IDEA:

• ***Holmes v. Millcreek Township School District, 205 F.3d 583 (3d Cir. 2000)***. This case involved a student with severe hearing loss who used hearing aids and sign language interpreter services in his general education classroom under an IEP that was developed with assistance from an IEE completed by Western Pennsylvania School for the Deaf. Parents wanted same IEE process for re-evaluation and reimbursement by the LEA. The LSS offered a re-evaluation completed with the assistance of the school district interpreter. Local due process ruled for reimbursement, but did not rule on the appropriateness of a re-evaluation. The decision was appealed and reversed on “legal error.” The parents prevailed in an appeal to the U.S. District Court for attorneys’ fees, prior court costs, and IEE costs. The school district appealed again, and the District Court of Appeals upheld the award of attorneys’ fees, but reduced the amount since it felt the family had contributed to “protracted proceedings” and should share in the costs. The reimbursement for the IEE costs was reversed since the LEAs re-evaluation was not shown to be inappropriate.

• ***[Student] v. Branford Board of Education, Order 01-320 (2001)***. This case involved a four-year-old child with a CI and history of AVT provided under Part C of IDEA. The AVT was continued at the LSS’s expense under the IEP when the child turned three. The child was placed in a private mainstream preschool at the parents’ expense rather than the LSS non-categorical preschool class for students with disabilities, but the parents did request that the LSS provide an FM. The LSS maintained their preschool provided FAPE and refused to provide FM for this student in a private school. The hearing officer ruled in favor of the parents and ordered the provision of FM, reimbursement for continued AVT, and payment of private school tuition.

• ***D.D. v. Foothill SELPA 38. IDELR 29 (CA 2002)***. This case involved a sixteen-month-old child initially served in the home by

Text Box 4

Case Law Summary Acronyms	
ALJ	Administrative Law Judge
AVT	Auditory Verbal Therapy
EI	Early Intervention
FAPE	Free Appropriate Public Education
IEE	Independent Educational Evaluation
IEP	Individualized Educational Plan
IFSP	Individualized Family Service Plan
IHO	Impartial Hearing Officer
CI	Cochlear Implant
LEA	Local Educational Agency
LRE	Least Restrictive Environment
LSS	Local School System
SLP	Speech-Language Pathologist
TOD	Teacher of the Deaf and Hard of Hearing

a TOD and an SLP provided by SELPA (Special Education Local Plan Area) under Part C. SELPA proposed to continue the same services after the child received a CI. Parents requested placement at a private oral school, where staff were experienced in serving students with CIs and included two full-time audiologists. The ALJ ruled that the program developed by the staff of the early childhood program could not provide an appropriate EI program for this child because the staff did not have sufficient training to work with cochlear implants. The LSS claimed that the private school provider could not meet all of the needs on the child's IEP and that the private school setting violated natural environment requirements of Part C. The ALJ ruled in favor of the parents and ordered the SELPA to pay for the private school placement.

• ***Stratham School District v Beth and David P.*, 38 IDELR 121 (D.N.H. 2002); 103 LRP 4317 (02-135-JD, 2003 DNH 022).****

This case involved a three-year-old using a CI with an IEP that included services from a TOD and an SLP and objectives based on the use of the CI. The parents requested reimbursement for mapping co-payments and transportation costs to the CI center in a neighboring state. The school district refused stating the CI and associated costs were a medical, not educational, expense. The hearing officer ruled in favor of the parents, and on appeal by the LSS, the lower court decision was upheld in U.S. District Court. The higher court ruling confirmed that "...the educational methodology chosen for [the student] includes the use of the CI as a necessary part of the FAPE provided... Under these circumstances, the mapping services necessary for the use of [the student's] CI are related services within the meaning of the IDEA." (**Note: This was a precedent-setting case involving audiology services that resulted in changes identified previously in IDEA 2004 Regulations [34CFR §300.34(b); §300.113(b)].)

• ***W.F. v. Flossmoor SD* 38 IDELR 50 (IL 2002).** This case involved parents who unilaterally placed their four-year-old son with a CI in a private oral/aural day school after the LSS offered placement in a classroom that used total communication. Due process was filed for FAPE and retroactive and prospective reimbursement. The IHO ruled that the private school placement should provide FAPE for this student for at least one more year (because of his CI) and rebutted this case as a methodology issue. The parents were awarded reimbursement for both tuition and transportation costs.

• ***Avon Local School District*, 38 IDELR 254 (SEA 2003) (Ohio).****

This case involved parents who initiated due process when their school system refused reimbursement for costs associated with the mapping of their four-year-old daughter's CI. The IHO cited the Stratham School District Decision (above) and ruled in favor of the parents stating, "A properly functioning CI is necessary for

[student] to enable her to have access to a FAPE... School District is responsible for the costs of mapping and audiological testing services for [student]." (**Note: Ruling made prior to the adoption of IDEA 2004 Regulations.)

• ***S.H. v. State-Operated School District of the City of Newark*, 336 F.3d 260 (3d Cir. 2003).** This case involved a three-year-old child with a severe to profound hearing impairment placed for two years in an out-of-district public school for children who are deaf and hard of hearing (based on her needs and a lack of FAPE in her home district). The LSS then recommended a placement change to a self-contained program within a mainstream school justified by LRE. The parent requested a due process hearing, and after hearing testimony, the ALJ ruled that the LSS program did not provide FAPE for this child. The LSS appealed, was upheld by Magistrate Judge Opinion, and was adopted by the U.S. District Court. The case was heard by the U.S. Court of Appeals, and the judgment of the District Court in favor of the school was reversed.

• ***[Student] v. Encinitas Union ESD*, 2645 (CA 2003).** This case involved an eight-year-old student with a CI previously diagnosed with Landau-Kleffner syndrome. The initial IEP called for the parents to train the staff in the CI maintenance and to provide FM, but auditory goals were not specified. The parent sought help from a private audiologist and SLP, and then filed due process for reimbursement from the LSS. The IHO ruled in favor of the parents and ordered the development of auditory goals and training of an instructional aide for monitoring the equipment.

• ***Megan C. v ECI LifePath Systems* (ECI Docket No. 001-ECI-0803) (Texas, 2004).**** This case involved the parents of a two-year-old with a CI who initiated due process for reimbursement for mapping expenses, related audiological testing, and associated travel expenses under Part C of IDEA. The IHO cited Stratham and Avon School District Decisions (above) and ordered these costs be covered and included in the IFSP as EI services under IDEA. (**Note: Ruling made prior to the adoption of IDEA 2004 Regulations.)

• ***Missouri Department of Education v. Springfield R-12*, 358 F.3d 992 (8th Cir. 2004).** This case involved a child with vision and hearing deficits initially placed within the local school district. After increasing behavioral problems, residential placement was recommended. The state public residential school denied acceptance, and the parents placed their child in an out-of-state school for the blind and then requested reimbursement for costs. When challenged through a local due process hearing, the panel agreed that the local district should reimburse the parents. The decision was upheld on appeal in two different District Courts.

• *Shapiro v. Paradise Valley Unified School District No. 69*, 152 F.3d 1159 (9th Cir. 1998); *Shapiro v. Paradise Valley Unified School District No. 69*, 317 F.3d 1072 (9th Cir. 2003); *Shapiro v. Paradise Valley Unified School District No. 69*, 374 F.3d 857 (9th Cir. 2004). This case involved a seven-year-old deaf student with a CI placed at a private residential oral school for a 3-year study, tuition-free. The parents requested continued placement, and the LEA decided to start a local oral program. The parents objected since the program was not yet in place and filed due process while placing the student back at the private school. The LEA developed an IEP based on the private school data only without parents or current teaching staff present. Several levels of hearings and appeals made differing decisions on reimbursement and FAPE, but ultimately the U.S. District Court of Appeals affirmed and upheld the earlier rulings for the parents, stating FAPE was provided by the private school. The parents were awarded reimbursement for school costs and attorneys' fees.

• *C.M. v Miami-Dade County School Board* (2003); *M.M. ex rel. C.M. v School Board of Miami-Dade County FL 437 F.3rd 1085* (11th Cir. 2006). This case involved the parent of a four-year-old child with a CI who sought reimbursement for AVT while the child attended a private school. The ALJ ruled there was no jurisdiction for the parents' claim because the child was never enrolled in the public school, and failure to offer AVT was not a denial of FAPE. The District Court dismissed the case because IDEA does not permit challenges to an IEP on the basis that it is not the most desirable program. The U.S. Court of Appeals upheld the decision for dismissal on the basis of failure to state a viable claim for relief under IDEA.

Cases Filed Under 504 and OCR Rulings:

• *K.S. v. George West ISD (TX 2001)*. This case involved a ten-year-old student with bilateral mild conductive loss. The LSS provided an FM and preferential seating under the 504 plan. The parents filed due process for FAPE. The IHO dismissed the case saying the student's impairment did not adversely impact educational performance, thus the student did not qualify for IDEA.

• *Cave v East Meadow Union Free SD*, IDELR 92 (2nd Cir, 2008); *Cave v. East Meadow Union Free School District*, 514 F.3d 240 (2d Cir. 2008); *Cave v. East Meadow Union Free Sch. Dist.*, 47 IDELR 162, 480 F.Supp.2d 610 (E.D. N.Y. 2007), *aff'd*, 49 IDELR 92, 514 F.3d 240 (2d Cir. 2008). This case involved a high school student using bilateral CIs with an IEP that provided for a sign language interpreter, TOD support, a notetaker, classroom amplification, closed-caption systems, and preferential seating. The school district denied the request for the student to bring a service dog to school at the recommendation of the Section

504 team (this recommendation was also not on the student's IEP). The parents filed a suit in the U.S. District Court under Section 504 and ADA to force the district to allow the student to bring his service dog to high school classes. The Court determined that the parents did not "exhaust their administrative remedies" under IDEA and dismissed the case for lack of jurisdiction under ADA and Section 504.

• *J.W. v. Fresno Unified SD*, 50 IDELR 42, (E.D., CA 2008). This case involved a student with a hearing disability on a 504 Plan. A California District Court agreed with the school district dismissing this case because the student could not seek the legal remedies of the IDEA when he alleged that he had not been provided with a FAPE. Section 504 does not focus on the needs of the student based on his educational performance (i.e. FAPE), but on the access to educational services (i.e. absence of discrimination based on disability).

• *OCR 2003 Ceres, CA Unified School District*, 39 IDELR 221. This case involved the parent of a student with identified hearing impairment who contended that the child's classroom teacher did not use an FM device as required by the student's IEP. The IEP called for the teacher to wear the device 90 percent of the instructional time, as a means of communicating with the student. OCR determined that the teacher had experienced intermittent problems maintaining and using the unit. However, evidence confirmed that the school's principal took steps to identify and correct the problem. The principal, along with a resource specialist instructor, met with the teacher to ensure she understood how to use the device and was aware of the requirements of the child's IEP.

Other Cases:

The following cases are recent Supreme Court cases not involving hearing impairment, but whose decisions have implications for all cases brought to due process under IDEA.

• *Schaffer ex rel. Schaffer v. Vance*, 2 Fed. Appx. 232 (4th Cir. 2001); *Weast v Schaffer ex rel. Schaffer*, 377 F.3d 449 (4th Cir. 2004); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, and 126 S. Ct. 528 (2005); *Schaffer ex rel. Schaffer v. Weast*, 554 F.3d 470 (4th Cir. 2009). This case started with an ALJ's decision that parents, who had challenged a local school system's program as not being sufficient to meet their son's needs, were required to prove the program's inadequacy. This case regarding "burden of proof" was appealed, re-appealed, and ultimately heard by the U.S. Supreme Court. The justices held that the party seeking relief bears the burden of proof in states that do not already place the burden of proof on one party or the other (in the latter, they chose to defer to state statute).

• *Forest Grove SD v. T.A.*, 9th Cir. (2008); 557 U.S. (2009). This case involved a student initially found not eligible for services under IDEA or 504 from the LSS. The parents placed him into a private school, then sought reimbursement. The IHO ruled in favor of the parents and ordered payment by the LSS. The decision was appealed to the Federal District Court, who set aside the award citing that IDEA 1997 barred reimbursement for students who had never been in special education. The Court of Appeals reversed this decision and remanded to the 9th Circuit, who ruled in favor of the parents. The Supreme Court heard this case to resolve the split in District decisions and ultimately ruled that IDEA 2004 does permit reimbursement under these circumstances. The case was remanded back to the District Court to determine the amount of the award.

Summary of Case Law

The preceding examples do not provide an exhaustive list of cases involving students who are deaf and hard of hearing, but they are considered representative of those due process cases filed over the past decade. It is apparent that audiology typically is not the primary issue, with the exception of the cases dealing with mapping and maintenance of a cochlear implant. More often cases deal with placement and services providing a free appropriate public education, defined, ironically, by the 1982 U.S. Supreme Court decision in *Board of Education v. Rowley*, regarding a student with a hearing impairment. The majority of the cases included above concern students who use cochlear implants, a trend that has increased during the past decade.

Regardless of the issue, however, these cases remind us that the IEP is the key for clarifying needs that define FAPE for individual students. With options for mediation and a mandatory resolution session that offer opportunities to resolve disputes prior to due process hearings under IDEA 2004 [§ 1415(f)(1)(B)], hopefully the number of due process hearings will decrease in future decades. Hopefully more students will receive appropriate services in a timely manner *without* court intervention.

Readers are referred to resources listed at the end of this article, as well as sites such as www.Findlaw.com, www.Versuslaw.com, and the *Individuals with Disabilities Education Law Reporter (IDELR)* for more information on the cases summarized above and other due process proceedings of interest.

The Evolving Role of the Educational Audiologist

Changing demographic characteristics of students with hearing loss in the last decade are having a significant impact on the role of educational audiologists. These trends include fewer students with hearing loss being educated under IDEA, more students with hearing loss on 504 Plans, students in rural areas with hearing loss not having consistent support from a teacher

of the deaf, students with listening problems benefitting from accommodations, increasing hearing technology options, and more reliance on hearing instruments and hearing assistance technology. Educational audiologists are in a position to support students in all of these situations and, increasingly, they should be the “go to” professional to assure access accommodations to support classroom listening and to help monitor developmental and educational benchmarks. As special education policy becomes more integrated with general education policy, so must services.

Internet Resources

- **www.access-board.gov/acoustic** - Access Board website with progress report on state and local action, links to ANSI/ASA standard, technical assistance documents, and other resources.
- **www.ada.gov** -U.S. Department of Justice ADA home page.
- **www.agbell.org/** -Links to selected due process decisions and case proceedings (click on topic under Advocacy section).
- **www.ceasd.org/position_papers.shtml** -Conference of Educational Administrators of Schools and Programs for the Deaf website with links to position papers related to impact of IDEA and NCLB on students who are D/HH.
- **http://clerccenter.gallaudet.edu/Clerc_Center/Information_and_Resources/Info_to_Go/Laws.html** -Information on IDEA, NCLB, Rehabilitation Act of 1973, and ADA pertinent to D/HH.
- **www.dredf.org** -Website for Disability Rights Education and Defense Fund, Inc. with information and multiple links relating to IDEA, ADA, and Section 504.
- **www.ed.gov/about/offices/list/ocr/504faq.html** -FAQ document revised to clarify Section 504 requirements for elementary and secondary students and incorporate relevant information on ADA of 2008.
- **www.ed.gov/nclb/landing.jhtml** -Information site for No Child Left Behind with links to legislation, state information, and related resources.
- **www.edlawrc.com/special_education.htm** -Education Law Resource Center site with multiple links covering and comparing IDEA, IDEIA, and Section 504.
- **www.eduref.org/cgi-bin/print.cgi/Resources/Reference/Law/Education_Law.html** -The Educator's Reference Desk with multiple links to internet sites and organizations dealing with education law.
- **www.handsandvoices.org** -Web home for Hands and Voices organization with links to legal information and articles covering services to children who are deaf and hard of hearing.
- **<http://idea.ed.gov/>** -Dept. of Education website that provides information on IDEA 2004 legislation and implementing regulations for Part B. Includes links to IDEA topic briefs, as well as other news information and resources for technical assistance.
- **www.letthemhear.org/articles** -IDEA 2004 special education web resource center for parents and professionals (need to register to access full articles & selected case law).
- **www.listen-up.org** -Site specific to hearing disabilities; link to "Your rights" provides archived information on legal decisions and policy letters.
- **www.nad.org/issues/education/k-12** -Access to IDEA, Section 504 & NCLB information, Bill of Rights for D/HH Children, NAD Position Statements, as well as links to selected case law.
- **www.nasdse.org** -Resources from the National Association of State Directors of Special Education, including special education, deaf education and response to intervention.
- **www.nectac.org/idea/idea.asp#regs** -National Early Childhood Technical Assistance Center website with information on current IDEA legislative and regulatory activity and links to OSEP policy letters and performance data.
- **www.wrightslaw.com** -Excellent site maintained by attorney parents with multiple links to legal information and educational case law for parents with children with disabilities (majority of legal information concerns children with autism, but relevant legal information for any disability category).
- **www.wrightslaw.com/info/sec504.summ.rights.htm** -Overview of Section 504 & ADA with comparisons to IDEA 2004; links to information brief, "Section 504, ADA, High Stakes Testing, and Statewide Assessments."

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