31 Education and Access Laws for Children with Hearing Loss

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Summary

This chapter explores the concept of disability in federal laws and how the legal treatment of inclusion has evolved in the United States. Eligibility for services requires that a child or adult demonstrate a disability that limits one or more life activities. Over time, coverage of disability laws has expanded to support the provision of services needed to enable children and adults to attend school, live, and work in the mainstream. This chapter reviews laws relating to education, telecommunications, and general access in public places and in the workplace. It summarizes, in layman's language, the specific provisions of Federal laws that provide access for children and adults who are deaf or hard of hearing. The emphasis is on mentoring parents in taking charge of their child's needs and also helping children become their own best advocates so that they can fully benefit from the laws that are in place that can help them throughout their lifetime.

Keywords

disability, access, mainstreaming, accommodations, advocacy, mentoring, telecommunications, Individuals with Disabilities Education Act (IDEA)

Key Points

- Underlying a child's or an adult's eligibility for services under U.S. laws is the need to demonstrate a disability that limits one or more major life activities.
- U.S. disability laws support the provision of services needed to enable children and adults to attend school, live, and work in the mainstream with full access to telecommunications, communication access, and other services that support their needs as people with hearing loss.
- Passage of laws does not guarantee access to needed services. Children with hearing loss should be involved in the Individualized Education Program and all discussions of their needs from a young age, so that they can develop the knowledge and skills that they will need to be their own best advocates.

31.1 The Concept of Disability

Many parents still experience periodic frustrations when seeking services and appropriate placement options, but overall, families can expect that their children who are deaf or hard of hearing will attend a neighborhood school with their hearing peers and with needed services, go to college with full communication opportunities, enter the workforce supported by whatever accommodations they require, and enjoy meaningful access to a wide range of telecommunications products and services. In the past 30 years, there has been a dramatic expansion in the application of federal laws to address the needs of people with disabilities. Children and young adults with hearing loss have benefited from such legislation in diverse and important ways.

We have now moved from an environment in which a child with a significant hearing loss could expect to work in a "deaf" trade (such as typesetting) and spend her life in the deaf community, to a largely open society in which a young person who is motivated and has received appropriate services and support can pursue whatever academic and professional career she chooses, regardless of her level of hearing loss or communication modality. Not long ago, those of us who were deaf relied on telecommunications relay volunteers to call our family members or our business associates. I still vividly remember waiting my turn for a volunteer relay assistant to become available to help me make a telephone call so I could speak to a client. If I happened to find someone who could type quickly without too many errors, I proceeded to make all the calls I needed to make that day in nonstop fashion.

Our perspective now in the U.S. and in many parts of the world is that services and support should be available to provide full access for a child with hearing loss. The scope of our national disability laws has been broadened to require freedom from discrimination as a result of a disability; full use of available technologies such as cell phones and broadcast and cable television; appropriate services and support for families during early intervention (EI) and for school-aged children at school; consideration of workplace needs; and communication access in public places, such as theaters, museums, and transportation facilities. By and large, the laws are in place. Still, passage of laws is one thing; ensuring that a child or a young adult has what he is entitled to is another matter entirely.

This chapter is designed to provide the information needed to undertake three important tasks as an audiologist: (1) mentor and coach a family and child to become advocates for the child's needs; (2) become familiar enough with the laws to help families know what they are entitled to under our legal system; and (3) point them to additional resources—beyond what the audiologist can realistically offer—that they can tap into now and as the child ages and her needs progress. With regard to the last task—as with all children—just when we think we have the hang of parenting, our children enter a new phase of their lives and parents must adjust to a whole new set of challenges. Children with hearing loss are no different in this regard. For that reason, it is important to provide families and patients with resources and skills that will aid them over the long term.

Patients today will grow up in a society that views disability very differently than was the case in our country 50 or even 25 years ago. Our new model for disability has been evolving for some time, but the new thinking is that there is no pity or shame in having a disability. Rather, the stereotyping and fears about disability, and ultimately the discrimination that occurs because
of a lack of access to services, are the real problems. We’ve moved away from trying to hide the fact that someone cannot hear or see to encouraging people to be open about their disabilities and focus on what they need.1

A public example of the way this new perspective has played out involves President Franklin Delano Roosevelt. Roosevelt contracted polio as a young man, before being elected governor of New York, and never walked again after his illness. Although it was widely known that he had difficulty moving about because of the paralysis, the fact that he used a wheelchair and could not walk was little known by the average American. He was never photographed in his wheelchair, and on those occasions when he appeared in public, he wore painful leg braces and was assisted by others when he walked. None of this was publicly discussed until well after his death because of the stigma associated with being confined to a wheelchair and having a significant disability.

In 1997, a national memorial honoring Roosevelt was completed in Washington, DC. The initial design gave no hint that Franklin Roosevelt used a wheelchair. The larger-than-life statue of President Roosevelt at the memorial site (Fig. 31.1) shows him seated, with a cape draped over his legs, in such a way that his wheelchair is entirely hidden. Disability advocates were furious that a memorial of this magnitude on the national mall in Washington, DC, purposely concealed the fact that Roosevelt used a wheelchair. They felt it was a continuation of past practices in which society hid people with disabilities or, in this case, intentionally veiled the fact that a powerful and charismatic person was not able-bodied. Disability organizations successfully argued that an additional statue be added to the memorial, a statue that shows him in his wheelchair. Although his disability was never revealed to the public during his lifetime, advocates stated that if he were alive today, Roosevelt would have wanted the public to know that he served as president of the United States—the most powerful position in the world—with a significant disability. Another statue of Roosevelt in his wheelchair (Fig. 31.2) was added in 2000 to coincide with the 10th anniversary celebration of the passage of the Americans with Disabilities Act (ADA) and was formally dedicated by President Bill Clinton.

That viewpoint provides the basis for our federal laws that require nondiscrimination and access. For an individual to be eligible for coverage under most U.S. laws that provide services or accessibility for a child or an adult with hearing loss, the individual must demonstrate a known disability. For example, under the ADA, the definition of disability was construed broadly to include anyone who has a physical or mental impairment that substantially affects one or more major life activities. Hearing loss is considered to be one of these impairments.2

But what if assistive technology so improves the individual's condition that he is no longer limited in life activities? There have been several Supreme Court cases in which the definition of an individual with a disability was narrowed. In one case, individuals were denied jobs as commercial airline pilots because they were nearsighted.3 With eyeglasses, their vision was corrected to 20/20. Those individuals felt that they should have been protected by the ADA because, without glasses, their vision was a significant limitation. The court ruled in favor of the airline, stating that
those individuals had too much sight with corrective glasses to fall within the disability law and its protections. The Sutton decision suggests that an individual who receives substantial benefit from assistive technology such as hearing aids (HAs) or cochlear implants (CIs) could also lose the protection (or possibly services) of disability laws if the correction provided by technology provides the equivalent of normal hearing.

An audiologist may be asked by families to discuss their child’s hearing loss and her need for services. This expertise can be invaluable in demonstrating functional or practical aspects of hearing loss as well as the specific services that a child needs to keep up with her peers. At present, no hearing technology provides the equivalent of normal hearing, so it is important to demonstrate and discuss the impact of a child’s hearing loss on listening and learning.

Pearl

For example, using sentence recognition in noise scores or single words in quiet or noise to demonstrate how much a child is missing may help demonstrate the impact of the hearing loss on her functional performance.

Still another aspect of the issue relates to a reticence by some families to think of their child with a hearing loss as having a disability. Some families so desperately want their child to be normal that they are reluctant to call attention to her hearing loss and consequently do not pursue services such as a remote microphone (RM) system that could help her. Even parents of children with profound hearing loss who use CIs have been known to minimize the impact of the child’s deafness and boast that their child does not need services at school. Without delving into the psychological aspect of this kind of thinking and the impact that it could have on the child, it is important to acknowledge and understand that the concept of disability underlies the framework for laws that ensure educational services and accessibility features that allow children and adults to engage in various activities and be included in all of the same opportunities in life as anyone else.

Although the person’s disability determines eligibility, our laws in America emphasize the individual’s ability and our commitment as a society to provide what is needed to allow inclusion. Within this context, an agency or organization—public or private—is prohibited from discriminating on the basis of a person’s disability. It is also expected that organizations will provide reasonable accommodations and services that will make their offerings accessible to children and adults with hearing loss.

Three categories of laws will be covered in this chapter:

- Education
- Telecommunications
- General access in public places and in the workplace

There is some overlap between these categories. For example, some laws that primarily concern general access can be applied to educational settings for children who do not qualify for coverage under the Individuals with Disabilities Education Act (IDEA), and there are general access laws (such as the ADA) that have telecommunications components.

31.2 Education Laws

31.2.1 The Individuals with Disabilities Education Act

IDEA is the primary federal program that requires state and local aid to address the requirements of children with disabilities in educational settings. The legislation was originally passed in 1975 because America’s educational system was not meeting the needs of children with disabilities. When IDEA was first signed into law by President Gerald Ford, only one in five children with disabilities attended public school. After passage of IDEA, school attendance and matriculation rates for children with disabilities dramatically increased.

IDEA was most recently updated as the 2004 Reauthorization of the Individuals with Disabilities Education Improvement Act of 2004. The 2004 law maintains the basic structure and civil rights guarantees of the original IDEA law. Like all federal legislation, IDEA was passed by Congress and signed into law by the president. Regulations explaining how the IDEA law is to be implemented by states and local school districts were then developed by the U.S. Department of Education with input from diverse organizations. At this writing in 2016, the most recent regulations were published in the Federal Register on August 14, 2006, and include revised language relating specifically to children with hearing loss. Since IDEA is a funding statute, states and local school districts must follow these procedures to receive federal funds for public education.

An audiologist’s expertise is vital to the families he serves in helping to demonstrate the importance of specific and appropriate services for a child who is deaf or hard of hearing. Like most federal programs, IDEA has its share of jargon, and even experienced audiologists can be intimidated by the alphabet soup of acronyms that fills the pages of the regulations. Nonetheless, the audiologist’s expertise is in understanding the audiologic needs of patients, and such information is invaluable in helping children receive the EI or school-based services they need to excel.

Part B of the Individuals with Disabilities Education Act

Part B of IDEA focuses on school-based services and covers children 3 to 21 years of age. The cornerstone of the law, since its initial passage, has been the concept of a free and appropriate public education (FAPE) that provides for special education and related services that are specifically designed to meet the needs of a child with a disability. The legal intent is to allow children with disabilities full access to an education while addressing their special learning or access needs. The following glossary of terms covering FAPE and other key concepts is intended to help best understand terms within the IDEA framework.
Free and Appropriate Public Education

A free and appropriate public education (FAPE) is to be provided to the child with a disability as described in the Individualized Education Program (IEP; the document that describes how the child's needs will be met). The services to be provided are free. Families cannot be charged if the services are identified in the child's IEP. The word appropriate is important and emphasizes that the school district must consider the individual needs of the child.

Individualized Education Plan

The IEP is a written legal document that provides detail on the special education and related services that a child needs to receive an education. The IEP should be developed in a collaborative way between the family and school personnel. It should outline both the child's needs and how her school placement and services will address her unique needs. An IEP should include: (1) the child's current educational performance; (2) goals for the school year and how these goals will be met with specific educational or related services; (3) whether and how the child will participate in regular education programs; and (4) criteria for evaluating the child's progress against the goals. It is very important to have the IEP provisions in writing. Although we generally think of the IEP process as being an annual event, if there is significant change in the child's status (such as undergoing CI surgery over winter break, experiencing a decline in hearing, or any occurrence that affects the child's ability to access her educational program), parents can ask for a review of the IEP, and this can be done at any time.

Least Restrictive Environment

Least restrictive environment (LRE) emphasizes that the child will be educated, to the extent possible, with children who do not have disabilities. IDEA emphasizes that children should be removed from the regular classroom only to the extent needed to provide special services. LRE requirements are "a strong preference, not a mandate, for educating children with disabilities alongside their peers without disabilities." The LRE concept can be a source of controversy when families and school personnel disagree on what placement is best for the child. In many instances a school district's perspective on LRE for a child is driven by what programs or options are already in place, rather than by what placement would best serve the child. School districts are required by the law to offer a continuum of alternative placements to meet the needs of students, but sometimes a continuum of placements is not available.

It is helpful to think of LRE and the continuum of placements as a line along which the student may move according to his needs, usually (though not always) from a more restrictive environment to a less restrictive one. See Fig. 31.3 for an example of the continuum of public school placements. One child might best be served by an initial placement in a resource room (or self-contained classroom with other children who are deaf or hard of hearing) for most of the day. Over the course of his school career, he might spend less time in the resource room, and eventually he might be better served in a mainstream classroom with accommodations for his hearing loss (such as an RM system). Another child might spend her entire public school time in a state school for the deaf. Still another child might be best served by a 100% mainstreamed placement from first grade onward. IDEA requires that the child's needs drive the placement. As the child's hearing care expert, the audiologist has a key role in helping the child's family work with the school district to ensure a placement (and services) determined by her unique needs and not a placement that is driven by the too frequently used adage, "This is what we offer."

Mainstreaming

Mainstreaming is sometimes equated with the LRE. It is not the same; rather, mainstreaming is one example of how the LRE concept can be applied. For many families, the goal is eventually to have their children who are deaf or hard of hearing attend school with their normally hearing peers in a mainstream classroom. Other families believe that their children are best served in a classroom with other children with hearing loss. When and whether a child is ready for a mainstream placement should be a function of the child's readiness, both academically and socially. Some school districts discourage mainstream placement because they do not offer itinerant services, so it is difficult to serve children with hearing loss who are not clustered in one location.

Special Education

Schools must design and provide instruction that is specially designed to meet the unique needs of the individual child.

Related Services

"Related services" are services that help the child benefit from special education and may include speech and audiology services, physical or occupational therapy, and psychologic services. The most recent version of the IDEA regulations specifies that routine checking of hearing aids and CIs is appropriately covered as a related service, although replacement of the CI device and MAPping (see Chapter 22) are not the responsibility of the local school district.
Helping a Family with the Individualized Education Plan

A child's audiologist and the other hearing care professionals who serve her and her family (including the teacher of the deaf and hard of hearing, speech-language pathologist [SLP], and auditory-verbal therapist) should provide guidance and documentation to support development of the IEP. Support might include information on the child's communication skills, hearing status, and cognitive abilities; assessment of the listening environment and whether acoustical improvements are needed; assistive technology needs (e.g., hearing aid, CI, RM system); social and emotional factors; related services required (speech, educational audiologist, listening therapy); communication access needs, such as interpreters, note-taking, or captioning; in-service training for teachers and others, including classmates; and daily troubleshooting of the child's technology. The IEP is a binding document, but services will be provided only if they are written into the IEP. If the audiologist feels that the child is ready and would benefit from the mainstream, she has a key role in helping the family demonstrate the child's readiness and identifying and justifying those services the child needs to learn and to achieve.

Parents sometimes ask whether private schools are required to provide RM systems as well. They are, but not because of IDEA; rather, provisions in the ADA stipulate that communication access must be provided in public places. Private schools are considered a "public place" under the ADA.

In the 2004 regulations, interpreting services are identified as a related service. The definition of interpreting services has been expanded to include various forms of captioning and note-taking. Additionally, all of the various types of interpreting are covered, including cued speech, oral transliteration, and sign language interpreting.

Part C of the Individuals with Disabilities Education Act

Part C of IDEA addresses EI services for children up to 3 years. This part of IDEA provides grants to states to develop EI programs for infants and toddlers if they have developmental delays or have a diagnosed condition that could adversely affect the child's development. Children with hearing loss often experience language delays and are usually eligible for services under Part C. Unlike Part B, EI services are coordinated by a designated state agency, which controls the implementation and provision of services at the local level. The state agency varies by state and may be the state school for the deaf, social services, health department, or a special EI agency.

Individualized Family Service Plan

Part C services are provided through the Individualized Family Service Plan (IFSP), which addresses the needs of the child and family members, rather than just the child as is the case with Part B. IFSP services vary by state and might include:

- Speech-language pathology and audiology services
- Auditory therapy by an auditory-verbal therapist (certified or not)
- Home-based deaf education services
- Family training, counseling, and home visits
- Occupational or physical therapy
- Hearing aids or RM systems
- Psychology or social work services
- Sign language instruction for the child and family
- Information about, and exposure to, Deaf Culture
- Service coordination and transportation

A key role of EI professionals is to train the family in how to encourage language development in their child with hearing loss. Since many families are new to hearing loss, and because young children are likely to develop language as part of their family interactions, communication is an appropriate emphasis.

As part of the IFSP, a family will be assigned a service coordinator who will help the family obtain services as a function of the
child’s needs, the state’s offerings, and the resources allocated by the state for EI. As the child’s audiologist, you have a key role in helping the family and the service coordinator determine services and providers that will address the child’s hearing loss, the family’s preferences as to the child’s language modality, family goals, and any other special needs that the child may have. Approximately 30 to 40% of children with hearing loss have an additional disorder. These other issues can affect a child’s ability to develop language and should be considered along with hearing loss.

One final word about the EI process is in order. Given that most families will be new to hearing loss and that they are starting on a long journey with their children, it is important that professionals recognize from the start the importance of helping parents develop the skills they will need to negotiate EI (and later the school system) as well as the medical and psychosocial aspects of raising a child who is deaf or hard of hearing. IDEA recognizes that parents have the right to make key choices for their children. Some states have recognized the need to provide encouragement by establishing parent mentoring programs, such as Wisconsin’s Guide by Your Side, which is also offered by the parent organization Hands and Voices. State EI agencies not providing such services may be encouraged to do so.

### Pearl

You might also assist parents by establishing your own informal mentor network, linking parents of newly identified children with more experienced families.

### 31.2.2 Every Student Succeeds Act of 2015

IDEA focuses on providing access to an educational program; the Every Student Succeeds Act (ESSA) spotlights academic achievement. The law replaces No Child Left Behind (NCLB), eliminating accountability by states to the federal government while retaining the NCLB philosophy that every student should have the support needed to achieve target proficiency levels. Like the earlier NCLB, it provides a means for students to meet specific academic standards. States, school districts, and individual schools are to target resources to improve the achievement of students from at-risk backgrounds, including those with disabilities, and to monitor the quality and impact of IDEA services.

In the past, students with disabilities were often excluded from assessments and accountability systems. ESSA is a useful mechanism to further highlight and address the needs of pediatric patients for whom the audiologist, other service providers, or the family feels that the child’s IEP is not sufficiently providing quality services that allow her to meet the same high standards as her peers. The law authorizes federal monies to states and districts for activities designed to strengthen teacher quality in such areas as reading, math, science, and English fluency to help students with hearing loss gaining a high level of performance.

### 31.2.3 Section 504 of the Rehabilitation Act and the Americans with Disabilities Act

Section 504 mandates that all entities receiving federal funds must not discriminate and must offer services that provide access to their programs. Since all public schools and most colleges and universities receive federal funds, they are subject to the requirements of Section 504. Some children with hearing loss who are performing at grade level have been categorized by their school districts as not having an educationally significant hearing loss and thus are not eligible for an IEP. When this is the case, Section 504 can be used to provide related services, such as RM systems, interpreters, and captioning.

Colleges and universities (receiving federal funds) are not required to modify their academic programs for students with disabilities substantially, but under Section 504 they are required to make adjustments that will allow equal opportunity. For example, an art course might be substituted for music, or a student may need to be provided with more time to complete academic requirements than is customary. The college student will not have an IEP team to help her, so she must request and work out such adjustments.

The ADA can be applied similarly because the ADA requires that programs open to the public be communication accessible. The ADA’s Title III (Public Facilities) applies to public and private schools (K-12) as well as to college and universities, regardless of whether or not they receive federal funding. A summary of IDEA provisions and three other laws is covered in Table 31.1.

### 31.3 Telecommunication Laws

Before the telecommunications revolution, a lack of telephone access was one of the most limiting aspects of having a hearing loss. I can clearly remember what it was like before the ready availability of all of the telecommunications options we now have, including landline and wireless telephones with volume control and telecoil compatibility, telecommunications relay services provided by state agencies (rather than volunteers), email and instant messaging, and captioned television and video programming. This set of services has made an extraordinary difference in the lives of young people who are deaf or hard of hearing, regardless of their level of hearing loss or mode of communication. A child with a hearing loss today will make heavy use of text messaging and email, putting her on a par with her hearing peers who are using the same technology.

A bit of history is in order as we review the framework for today’s telecommunications laws. Ironically, the telephone was invented by Alexander Graham Bell, a teacher of the deaf, in part because of his abiding concern about augmenting communication opportunities for people who are deaf and his related interest in acoustics. Bell’s mother, Eliza Grace, and his wife, Mabel, were both hard of hearing. He was interested in telegraphy machines as a mechanism for providing reliable messaging options for people with hearing loss, an interest that eventually led to his invention of the telephone. How ironic that his discovery actually produced extraordinary frustration and isolation for people with hearing
The Hearing Aid Compatibility Act (HACA) of 1988 required that all wireline and cordless (not wireless) phones manufactured after 1989 incorporate the ability to connect internally with the telecoil in hearing aids. (Wireless telephones were originally exempt from the HACA rules; see the following section for the 2003 rules, which later were expanded to include wireless.) A negotiated rulemaking completed in 1996 added the requirement that all wireline and cordless phones manufactured after 1998 also provide volume control with minimum gain of 12 dB and additional boost options up to 18 dB; there is also an option to provide even more gain if the phone has an automatic reset mechanism. The rulemaking also specified public locations where wireline phones were required to be hearing aid compatible (HAC). These include:

- The workplace
- Hospitals and residential health care facilities
- Coin-operated and credit card–operated telephones
- Emergency telephones (i.e., elevators, tunnels, highways)
- Hotel rooms

Having this requirement in place has greatly expanded the likelihood that people using hearing technology will have the telephones they need when they are in various familiar or unfamiliar environments.

There are large variations in how well various telephones work for different individuals. In a setting such as a hotel room or a place at rest stop on the highway, where one does not expect to be using a given telephone again, one does the best one can. But if the setting is one’s regular workplace (where one will be relying on a particular piece of equipment regularly) and the individual finds that the phone does not work well, she should take the initiative to request that her employer work with her to find equipment that provides acceptable access. Individuals of all ages should be encouraged to advocate for themselves and search for telephones that work well for them.
Wireless Telephones

The first wireless telephones were analog and did not create major accessibility problems for people using hearing technology, although few (if any) of these first wireless phones were HAC (i.e., included a method internally to connect with a telecoil). When Congress passed HACA 1988, it exempted wireless telephones, though it left the door open for inclusion of some phones in the future if specific criteria were met (i.e., if removing the exemption was in the public interest).

In 1995, a new type of digital wireless telephone technology began appearing in the United States, some years after its introduction in Europe and other parts of the world. The reported experiences of hearing aid wearers in those regions where digital wireless phones were being used were not promising. Before long, digital wireless technology took the country by storm. Advocates for people with hearing loss quickly realized that this was a significant problem that needed to be addressed within the federal regulatory framework. As a result of ongoing advocacy by consumers and their organizations over a period of almost 10 years, the Federal Communications Commission (FCC) eventually did agree to lift the wireless exemption for hearing aids under HACA. The FCC established technical standards set forth in the American National Standards Institute (ANSI) Standard C63.19. The FCC further required that each manufacturer or mobile service provider offer at least two digital wireless handset models that meet a specific interference standard for hearing aids under HACA. The FCC required that each manufacturer or mobile service provider offer at least two digital wireless handset models that meet a specific interference standard by September 16, 2005, and that at least 50% of their offerings comply with the standard by February 18, 2006. Additionally, each manufacturer or service provider was required to offer at least two models that met the standard for inductive coupling (with telecoil of a hearing aid) by September 18, 2006.

In August 2016, the FCC adopted new rules to modernize existing hearing aid compatibility and require that even more wireless phones be HAC. Specifically, 66% of manufactured phones must be HAC within 2 years of the new rules, and 85% must be compatible within 5 years. Additional time was given to service providers to meet these percentages.

In providing guidance, it is helpful to explain and reference the ratings that telephone handset manufacturers are required to include with the written materials about their products in stores and on their websites. Handsets that receive a compatibility rating of M3 or M4 have met (M3) or surpassed (M4) the ANSI compatibility standard for hearing aids set in microphone mode, as adopted by the FCC. The higher the M-rating, the higher the signal quality (and the lower the interference level) the handset will have. Handsets that receive a telecoil rating of T3 or T4 have met (T3) or surpassed (T4) the required standard as adopted by the FCC. The higher T4 rating will generally provide a better result for the user. Employees in many stores selling wireless telephones are unfamiliar with the ratings, so it is important to encourage patients to be persistent in asking for clarification. Specific handset model details are typically on manufacturer websites.

Although this rating scheme was specifically developed for hearing aid users, because it is a measure of radiofrequency interference, it is also appropriate as a guide for cochlear or osseointegrated implant users. Patients should be advised to use these ratings to assist in their selection of telephone models, but always to test a telephone before buying, because what works for one person may not work for another.

31.3.2 Telecommunications Act of 1996

Section 255

Section 255 of the Act required that telecommunications products and services be accessible to, and usable by, people with disabilities, if readily achievable to do so. The law covers wide-ranging products and services, including telephones (wireline, cordless, wireless); answering machines; pagers; and services such as call waiting, voice mail, and interactive voice response systems. The legislation was important in that it brought attention to the importance of thinking about the diverse needs of people with disabilities as part of the design of new products, a concept known as universal design.

Pearl

The universal design paradigm will be important to children of today as new products that have not been offered before are conceptualized and developed for our use.

There is some overlap between the Telecommunications Act and HACA. HACA is absolute, whereas the Telecommunications Act allows companies to fall back on the "readily achievable" language as grounds for not providing access. Section 255 has been important in requiring manufacturers to address the compatibility of their products with specialized equipment. An example of this is the compatibility of wireless telephones with teletypes (TTYs) and assistive listening devices (ALDs).

Section 713 (Closed Captioning)

Closed captioning of television programming enables children and adults with hearing loss to view the audio portion of a TV program as text on the television screen. [Fig. 31.4] demonstrates captioning of the children's TV program Arthur. This law made captioning a reality in America by mandating that all television programming, including broadcast, cable, and satellite, provide captioning. As a result of this important legislation, people with hearing loss of all ages have nearly full access to television programming.

Unless paid for by the federal government (see the following discussion of Section 508), videos (DVD or VHS format) developed by private companies are not required to be closed-captioned, although most entertainment videos produced today are captioned.

Pearl

Ironically, most educational videos developed for use in school settings are not captioned.
31.3.3 Section 508 of the Rehabilitation Act

Section 508 establishes requirements for electronic and information technology developed, maintained, procured, or used by the federal government. Section 508 requires federal electronic and information technology to be accessible to people with disabilities, including employees and members of the public. Federal agencies must comply with specific accessibility requirements when they procure or develop electronic and information technology. This requirement has important implications for employees or potential employees with hearing loss, as the standards effectively address key areas that often present barriers for people with hearing loss: telephones, TVs, videotapes, DVDs, multimedia Web sites, interactive voice response systems, and information kiosks. Although Section 508 applies only to those who are federal employees or those using federal programs, it also serves as a model that other employers can emulate.

![Image of Arthur with closed captions.](https://www.access-board.gov/508/HACA-rulemaking-factsheet/fig31.4.png)

**Fig. 31.4** The children's television program Arthur with closed captions, as mandated by the Telecommunications Act. (Image by Marc Brown and WGBH/Boston.)

### Table 31.2 Telecommunications laws pertaining to people with hearing loss

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<td>FCC</td>
<td><a href="https://www.fcc.gov/Bureaus/common_carrier/FAQ/faq_hac.html">www.fcc.gov/Bureaus/common_carrier/FAQ/faq_hac.html</a>. <a href="https://www.access-board.gov/telecomm/marketrepguidelines/431.htm">https://www.access-board.gov/telecomm/marketrepguidelines/431.htm</a>.</td>
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<tr>
<td>Telecommunications Act of 1996 Section 255</td>
<td>This act requires that companies make products and services accessible to, and usable by, people with disabilities, if readily achievable. It covers telephones (wireless, cordless, wireline), answering machines, pagers, and services such as call waiting, voice mail, and interactive voice response.</td>
<td>FCC</td>
<td><a href="https://www.fcc.gov/cgb/dro/section255.html">www.fcc.gov/cgb/dro/section255.html</a>. <a href="https://www.fcc.gov/general/telecommunications-act-1996">https://www.fcc.gov/general/telecommunications-act-1996</a>.</td>
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<td>Telecommunications Act of 1996 Section 713</td>
<td>As of 2006, 100% of all new English-language television programming must be closed-captioned: 75% of programming first shown before January 1, 1998, had to be captioned as of 2008. Spanish-language programming follows a different schedule. Some exceptions exist, such as overnight programs (2:00 am–6:00 am) and for those for whom captioning would constitute an undue burden.</td>
<td>FCC</td>
<td><a href="https://www.fcc.gov/cgb/consumerfacts/closedcaption.html">www.fcc.gov/cgb/consumerfacts/closedcaption.html</a>.</td>
</tr>
<tr>
<td>ADA, Title IV (Telephone Relay Services)</td>
<td>Telephone companies are required to provide interstate and intrastate telecommunications relay services 24 hours a day, 7 days a week, at no cost to the caller.</td>
<td>FCC</td>
<td><a href="https://www.fcc.gov/general/title-iv-ada">https://www.fcc.gov/general/title-iv-ada</a>.</td>
</tr>
</tbody>
</table>

### Abbreviations:

ADA, Americans with Disabilities Act; FCC, Federal Communications Commission; HACA, Hearing Aid Compatibility Act.
31.3.4 Americans with Disabilities Act, Title IV

Title IV of the ADA requires that telephone companies provide interstate and intrastate telecommunications relay services 24 hours a day, 7 days a week at no cost to the caller. Telephone relay services enable a person with hearing loss, who cannot understand speech on the telephone, to communicate with others through a relay assistant who types (or signs) what the hearing person is saying. A variety of user options are available including a captioned telephone, a computer, PDA, or wireless device can be used without special telephone equipment. Captions on a screen can accommodate persons with low vision with large text and variable fonts. Relay services continue to improve.

A summary of telecommunications laws reviewed here is provided in Table 31.2.

31.4 General Access

31.4.1 Section 504 of the Rehabilitation Act

Section 504 of the Rehabilitation Act forbids organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. The act applies to any federal agency or entity or program receiving federal funds, and it broadly defines discrimination as not being accessible to someone with a disability. Any grant, loan, or contract to a public or private entity or program requires that entity to follow the regulations of the act. It applies to employers, hospitals, human service programs, public schools, colleges, and universities—that receive federal funds.

Section 504 can be used to ensure that a child (or a person of any age) receives the accommodations she needs to participate fully in a program. It can be used to access services such as RM systems, interpreting, captioning, and note-taking. It may even be possible to use the act to obtain acoustical improvements in the built environment. Like most federal laws, Section 504 has a specific complaint process. What is a bit different is that this law allows each federal agency to have its own set of Section 504 regulations that apply to its own programs and the entities that receive aid from them.

Although we tend to think of applying Section 504 at school, the law may also be used to gain access to any educational or cultural program that a child might wish to participate in outside the usual school setting. As the child ages, Section 504 also applies to the workplace and to other institutions. The child's audiologist should encourage the child and his family to develop the skills and knowledge to seek whatever accommodations he needs to participate. This kind of thinking will serve the child now and throughout his life.

31.4.2 The Americans with Disabilities Act

The ADA was intended to provide people with protection from discrimination in all aspects of their lives. The four parts of the ADA address access to (1) employment; (2) state and local government services (which include educational institutions) and transportation; (3) public accommodations, which means anywhere the public goes (stores, theaters, places of entertainment, hotels and motels, health care facilities); and (4) telecommunications relay services (see the foregoing discussion of telecommunications laws). The overriding goal of all these parts ensures that people with hearing loss can use, benefit from, and enjoy the same services and opportunities as everyone else.

Title I: Employment Provisions

Title I, employment provisions of the ADA, requires any employer with 15 or more employees not to discriminate on the basis of a person's disability and, further, to remove barriers that prevent a qualified person from performing a job. The ADA does not say that an employer is required to hire someone who could not perform the essential functions of the job. For example, if a person cannot hear well enough to respond reliably to questions on the telephone, an employer would not be legally required to hire that person as a telephone receptionist. However, if an employee is qualified for a job and can do everything relating to her job except access spoken information during large group training activities, the employer would be required to provide communication access (such as an RM system, captioning, or interpreter) as a reasonable accommodation to meet the employee's needs.

An employer is required to provide such accommodations unless they are deemed burdensome. The courts have generally viewed accommodations like these access services as reasonable and not burdensome. As with all parts of the ADA, there is a specific process for lodging complaints should that be necessary.

Title II: State and Local Governments

Title II requires that state and local governments give people with disabilities equal access to the programs, services, and activities they sponsor. This part of the ADA is similar to Section 504; the main difference is that Section 504 applies to recipients of federal government monies, whereas Title II of the ADA pertains to all state and local governments regardless of size. For a child with hearing loss, this means that all offerings accessed by the child and her family—library, recreation, social services, and so forth—must be made accessible unless doing so would result in an undue financial or administrative burden.

Classroom acoustics has been discussed for inclusion in the ADA since 1997. With the publication and 2010 revision of the ANSI/ASA S12.60 Classroom Acoustics Standard, advocates strongly urged inclusion of acoustic requirements in the ADA. At present, the ANSI standard is voluntary unless referenced by a local or state code, ordinance, or regulation. School systems may opt to require...
compliance with the standard as part of new construction specifications. The standard can be used to guide acoustic improvements for students under IDEA. Many parents have worked with their school teams to include specific acoustical changes in their child’s IEP. The standard can be helpful in knowing what is an appropriate level of classroom noise and reverberation.

Title II also addresses public transportation, such as city buses or rail transit. Both the service and the communication systems that support the service (e.g., information kiosks, telephone information lines) are to be made accessible. In theory, this means that voice announcements on transit systems should also be provided in a text format.

**Title III: Public Accommodations**

Title III, public accommodations, covers businesses and nonprofit organizations that offer services to the general public. Any entity that normally conducts business with the public, including restaurants, hotels, stores, movies, theaters, convention centers, doctors’ offices, sports stadiums, fitness clubs, and private schools, is subject to the ADA Title III provisions. One area where there has been considerable effort by advocates is captioning at the movies and at live theater offerings. Although movie theaters are required to provide ALSs, including a means to link to the telecoil of a hearing aid, movies were exempt in the original ADA language from being required to show open-captioned movies. Several court cases upheld advocates’ position that although theaters are not required by the ADA to provide open captioning, closed captioning is a needed and appropriate method of providing communications access. Many live theaters now provide one or two open-captioned showings per run for a particular show. Fig. 31.5 demonstrates one technology for providing closed captioning in movie theaters and other places of entertainment. An increasing number of movie theaters now offer a means of accessing closed captions for nearly every film shown.

The definition of “places of public accommodation” continues to evolve. A 2012 court case brought by the National Association of the Deaf against Netflix argued that providers of streaming video entertainment on the Internet should provide captioning. By consent decree of a federal court, Netflix agreed to caption 100% of its videos.16

The specifics of how the ADA is to be implemented are described in detail in the revised Americans with Disabilities Act Standards for Accessible Design, which were adopted in 2010 and took effect March 15, 2012. The following changes in the regulations are of interest to children and adults with hearing loss:

- Technical standards for ALSs used in public places are required to ensure consistency in the quality and strength of the auditory signal.
- Neckloop attachments must be provided to allow inductive coupling between the ALS receiver and the telecoil in hearing aids or cochlear implants.
- Public telephones must have volume control with gain up to 20 dB.
- The number of required TTYs in public places was increased.

*Fig. 31.5* Rear Window is a closed captioning technology developed by WGBH National Center for Accessible Media in Boston and used in movie theaters around the country and at select attractions at Walt Disney World and other theme parks. Rear Window displays reversed captions on a light-emitting diode text display that is mounted in the rear of the theater. Transparent acrylic panels that attach to the seat in a theater reflect the captions for people with hearing loss. (Photo by Jeffrey Dunn for WGBH.)

- Fire alarm alerts, audible and visual, shall be permanently installed in a specific percentage of hotel rooms.

Section 504 and ADA general access provisions appear in Table 31.3.

### 31.5 Helping the Child Become Her Own Best Advocate

One of the most important lessons we can teach our children with hearing loss is that they must learn to be their own best advocates. We should help them understand that the laws are there to help them fully benefit from all life has to offer, and the accommodations that we reviewed here—at school, in the workplace, at the movies, when traveling, for telecommunications access—are basic rights in America. From an early age, we should involve children in the IEP process. The IEP should not be something that is done for the child; rather it should be a
Table 3.1 General access laws pertaining to people with hearing loss

<table>
<thead>
<tr>
<th>General Access</th>
<th>Coverage</th>
<th>Relevant federal agency</th>
<th>Web resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 504 of the Rehabilitation Act of 1973 (Nondiscrimination under Federal Grants and Programs)</td>
<td>Requires that any federal agency, organization, or program receiving federal funds not discriminate based on disability. Nondiscrimination means that such organizations must be fully accessible to people with disabilities. Any grant, loan, or contract to an entity or program—public or private—requires that entity to follow the regulations of the act. Applies to employers, hospitals, human service programs, public schools, colleges, and universities—if they receive federal funds.</td>
<td>Relevant federal agency</td>
<td><a href="http://www.section508.gov">http://www.section508.gov</a> <a href="https://www.ada.gov/cguide.htm">https://www.ada.gov/cguide.htm</a></td>
</tr>
<tr>
<td>Title II: State and local government and transportation</td>
<td>Title II: Transportation complaints to Federal Transit Administration</td>
<td></td>
<td><a href="http://www.ada.gov/cguide.htm">http://www.ada.gov/cguide.htm</a></td>
</tr>
<tr>
<td>Title III: Public facilities (private and nonprofit services open to the general public)</td>
<td>Title II-IV: Access Board (for guidelines and standards), Department of Justice (enforcement)</td>
<td></td>
<td><a href="http://www.access-board.gov/adaag/about/index.htm">www.access-board.gov/adaag/about/index.htm</a> <a href="https://www.access-board.gov/pcatoolkit/chap1toolkit.htm">https://www.access-board.gov/pcatoolkit/chap1toolkit.htm</a></td>
</tr>
<tr>
<td>Title IV: Telephone relay (see Table 3.2)</td>
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</table>

Abbreviation: ADA, Americans with Disabilities Act

Discussion Questions

1. Children with hearing loss are now being identified at birth and fitted early with technology that is considerably improved from what was available 10, or even 5, years ago. Regardless of their level of hearing loss, many children are learning language at a level equivalent to their hearing peers. What kinds of issues does this create in terms of eligibility under various disability laws, and what is your role in advising parents and school professionals?

2. What are the differences between legal intent and practice as it applies to each of the three categories of laws reviewed in the chapter?

3. How should we teach a child to advocate for herself, and at what age should that process begin?

4. What if you do not agree with the school district's decision about placement and services for a patient? What is your role vis-à-vis the child, her family, and the school-based personnel?

5. Does your role as a hearing health professional include or exclude being an advocate for the child and her family? What are the boundaries?

References


Additional Readings


Resources and Helpful Web Sites


[21] American Cochlear Implant Alliance is a nonprofit membership organization of clinicians and scientists in the field of cochlear implantation as well as consumer/parent advocates that organizes an annual clinical research symposium and provides information for the general public on CI's, including connectivity to other devices and advocacy to achieve full access: http://www.acialliance.org. Accessed January 5, 2018

[22] Center for Parent Information and Resources provides information to parents of children with disabilities on programs and services for young children under EI and school-aged children including the six regional parent technical assistance centers: http://www.parentcenterhub.org. Accessed January 5, 2018

[23] Hands and Voices is a parent organization that emphasizes unbiased advice on hearing and language options, information and support: http://www.handsandvoices.org/. Accessed January 4, 2018

[24] Hearing Loss Association of America is a consumer organization for people with hearing loss of all ages that provides materials on technology, advocacy, access laws, and telecommunications: http://www.hearingloss.org. Accessed January 5, 2018


[26] The U.S. Access Board has extensive online guidance materials on the ADA and Section 504: https://www.access-board.gov/. Accessed January 4, 2018