>> Hello everyone!

Welcome!

I have kids. I am not above the move sign to get everyone's attention. Attention in front. The last workshop of the day!

The last of the conference. We are going to try to make it fun!

But we are going to understand that it's legal, so there's only so much fun we can have with this topic. Thank you for coming to the last workshop of the day.

I'm Chris Payne sup rose. I'm the education policy legal counsel for the National Association of the Deaf.

And this presentation was planned originally for me to be with Sarah Honigfeld but she had a conflict. Unfortunately she wasn't able to be with us today. So now it's the Chris show. Who was here at the 1:45 presentation with me?

I wanted to see if I could use the same jokes again and I can't. Darn!

Okay.

For the people who are were here earlier in that session, I warned you already that my jokes are my jokes and they have not improved, so there's your fair warning.

Before we start this session, I'm going to be standing here to sign and I'll be using the interpreters so that everyone has access. I just wanted to check in with everyone. Are we good for language?

Can you all see or hear appropriately?

Perfect.

Okay. This is the plan for today. We are going to start with introductions. We'll review our learning objectives for today. And we're also going to give a brief overview of the ADA, 504 and the IDEA and we'll discuss main protections for each of those laws for d/Deaf/Hard-of-Hearing children. While we are going to spend some time on the transition from IFSP to IEP and what changes or what doesn't change when the child approaches the age of three.

We'll discuss situations that implicate each of these laws and then I want you to leave knowing about the resources that you can refer to later if you have questions, you'll have additional resources. So a little about myself.

And then I can get to know each other a little bit. I joined the education policy council for the NAD. That means I advise the NAD on legal policy issues.

I was a school teacher. I'm very comfortable with awkward silence. If there's a wait for volunteers, I will keep it awkward and wait until someone's willing to volunteer. I work at the NAD under the education policy council and typically we work one-on-one with families and service them. A lot of calls and emails from Deaf families, hearing families with a wide range of questions. Some of them are legal, like the school's not following my child's IEP, what do I do. Some people want to sue the school system. Some people call me because their child was just identified as Deaf and they have many questions about that. So from birth to sometimes parents will call me, honestly, because their kid's getting ready for college and they are not sure how that transition is going to go. So it's important that I keep my legal practice very broad.

NAD also works with Sara and we collaborate with different agencies, organizations, schools and universities. So it means a lot of meetings for me, right?

I also teach part-time in Law School and some undergrad.

I'm also a mom. I have two children. One is 9 and one is 7 who's hearing. The nine year old is Deaf and my seven-year-old will soon be 8, oh I will have an 8 and 9 year old very son soon. And my son is picking up ASL and like a duck to water, he has really gotten used to ASL and I have been trying to keep up with him ever since.

I mentioned to the group earlier today how small of a world it is. Yesterday at EHDI I actually met my son's teacher's father. What?

!

How does that even happen?

If you're wondering, I'm that mom who the teacher's dad knows who I am. I was like, anyway.

Yeah.

If anyone needs clarifications, either sign or the interpreters, please let me know. Before we jump in, I want to see who's here. So parents of d/Deaf/Hard-of-Hearing children, raise your hand, please.

Raise it up high. Raise it up. Raise it up!

Okay.

What about professionals?

Maybe also parents.

$$TRANSMIT Who else is here?

Who am I missing?

Are you a parent?

Deaf parents here?

Awesome!

I've learned that signing with the lanyard is dangerous. I'm also clumsy in spoken language, so I'm a danger to myself. Anyway.

By the end of today, I want you to be able to do these things that are listed on the learning objectives. Identify the main protections under the ADA, 504 and the IDEA act for d/Deaf/Hard-of-Hearing children. Also identify situations where the ADA, 504 and IDEA are implicated for d/Deaf/Hard-of-Hearing children.

Also, name resources for questions regarding the ADA, 504, and IDEA for d/Deaf/Hard-of-Hearing children.

This session is the last of a really long conference with a lot of material. I want to make this as interactive as possible.

Not just me lecturing the entire time. I absolutely can do that. I'm a Sagittarius. I was born in December. I am happy to be the star of the show. However, I would like to learn from you and have you learn from each other.

So first we are going to talk about the big picture of these laws that affect our kiddos.

We are going to step into content. When we do that, there are a lot of acronyms and abbreviations. Some you're going to look and say, okay, I already know this. I work with these laws every single day. And some of them you don't know what these letters mean.

So you can move however you want to. Write down in three minutes how many of these you know and can identify. If you know all of them, don't cheat, don't use Google, just try to see if you can identify all of these acronyms. You could pair up or work in threes, even fours, whatever you prefer.

I'm going to make you group up. You can't do this as an individual task.

I don't care how many of you are together, but at least partner up.

Okay everyone. Can I have your attention back to the front, please?

One, two, three, eyes on me!

Okay. Who could identify three or more?

Which group?

Raise your hand if you could identify three or more. How about five or more?

Seven or more?

Wait. How many do we have?

Okay.

8, who got all 8?

Okay!

We have a good mix.

Okay. So very briefly, I'll tell you what they all mean and then we'll discuss them in depth. The ADA is the Americans with Disabilities Act. Section 504 of the Rehabilitation Act Act. IDEA is the Individuals with Disabilities Education Act.

Are you excited yet?

Thank you!

Thank you!

Okay. EI, early intervention.

IFSP, individualized family services plan.

IEP, individualized education program. LRE, you got it, least restrictive environment.

And I see the eye roll with least restrictive environment. And then free and appropriate public education is FAPE. There will not be a quiz after but we will discuss each of these in depth, including the eye roll with least restrictive environment. Absolutely, we'll cover them all.

I promise this is not a Law School class. But it is important that we have at least some context about the important laws that govern education. So the ADA, the Americans with Disabilities Act, was passed in 1990. Maybe some of you have seen that there was a big amendment package in 2008 as well.

A lot of work by people working from different disability communities worked together to push this law to passage.

The ADA is not only applied in educational contexts, but applies in workplaces, schools, places of public accommodates as well. The ADA prohibits discrimination based on disability. It requires the provision of accommodations, reasonable accommodations.

As an example, under the ADA you cannot fire somebody from their job because they have a disability. The ADA requires that a building, for example a school, be publicly accessible.

And of course, there are also some requirements, exceptions, exceptions to the exceptions and we won't spend all day talking about those specifics because there's not enough time for that.

But hopefully you have a good understanding of this law and all the others, enough to which we can focus on how it applies to our children.

I guess I should have put 504 before the ADA because it came earlier in time, but oh well.

504 is a specific section of the Rehab Act, the Rehabilitation Act of 1973. This was huge. This was the First Federal Civil Rights protections for people with disabilities. It really was the Building Block of the work of the Civil Rights era. People with disabilities were recognized as what's called a protected class and there's a lot of great history about how different coalitions of people came together to pass 504 with major sit ins, protests, et cetera. Great history to learn and talk about another day.

The Rehabilitation Act similarly to the ADA protects against discrimination based on disability. It requires the needs of students with disabilities to be met as the same extent of needs of students without disabilities.

And you might think about the ADA picking up where Section 504 left off.

Because Section 504 applies only to entities that get federal funding.

It the ADA broadens to public spaces and to some other private entities.

IDEA, the Individuals with Disabilities Education Act, was the first Federal Special Education Law, really the federal special education law, which was passed in 1975. And then the -- it was then called the education for all handicapped children act. This law has connections again with the Civil Rights struggle. In 1954 the Supreme Court struck down segregation in Brown V Board of Education.

The Supreme Court ruled that separate but equal, that doctrine, was not constitutional and orders schools to be integrated.

Mostly focusing on Black and white schools.

Many children with disabilities were excluded from school. Some states had specific laws that students with specific disabilities were actually banned from going to school.

Specific to Deaf education in that era, there were either Deaf schools or nothing in many states.

States said that there was no requirement to teach Deaf education.

However, after Brown V. Board of Education parents of children with disabilities filed a lawsuit saying that there was discrimination based on disability.

Because of that there was a huge congressional investigation and in 1975 Congress passed the IDEA.

It wasn't called that at the time, but that was the law.

The IDEA covers children from birth to age 21, basically from birth until children go to college. However, when they go to college, they are no longer covered by the IDEA.

It has four parts, two of which we'll talk about today. Part C applies to infants and toddlers.

Birth to three.

And the focus in Part C is family services.

When the child becomes three, and let's not talk about transition yet, when the child becomes three, they are covered under part B until age 21 or until graduation from high school.

In part B the major right provided under the IDEA is FAPE, free appropriate public education.

This is an affirmative federal right to education. Now, exactly what FAPE is, the Supreme Court told us that free appropriate public education is not the right to the best education. So appropriate and best are not synonyms.

It means that people have the right to an educational benefit.

I would like to talk about transition a little more and then go back to specific rights and protections for d/Deaf/Hard-of-Hearing people under the law.

I want to talk about the difference between an IFSP and an IEP.

In terms of eligibility requirements they are different.

It is not automatically assumed that if you get services under an IFSP that you will qualify for services under an IEP. It's true for many children that they will, but that's not a given.

Under part B, so for children three and up, most children have to satisfy two qualifications, a disability that falls within a specific category, for example d/Deaf/Hard-of-Hearing, and -- keyword being and -- and need special education services because of that disability.

So you're probably looking at me and you're like yeah, okay, duh!

Which I say yes, that's true, but special education requires funding. Schools are not just going to provide you special education services without need.

So they were going to require this documentation in the IEP process.

Make sure if you're in the IFSP, that you have appropriate documentation that can be transferred.

And it's true that you can request specific services that you might not get.

There are levels of access, specific situations, some d/Deaf/Hard-of-Hearing children will only satisfy that second criteriaion, that they need special education services related to their disability. That shouldn't send you into panic mode. It should rather just tell you that you need some documentation to work with your family to get that documentation in place.

Many families just assume, well, yeah, look at my child, it should be obvious, but you need the documentation to get the IEP off the ground.

IFSPs and the rights that are provided in the law are different than IEPs. Part C, so birth to three, focuses on family support.

The central principle of Part C is that the needs of the young child and the needs of the family are one and the same, or at least connected.

The family is the major contributor to the IFSP, hence the F, the family services plan.

We joke about the F word. But here it's a good word. It's not a bad word. Family.

The IEP, the word E focuses on education, so the focus of an IFSP and an IEP is quite different.

Now let's move on to FAPE. FAPE is the right under part E of IDEA and it can be provided in different ways, from different situations, depending on the context. It could be one Deaf child in a fully-hearing environment. It could be pull out sessions. It can be a lot of other things.

LRE is the part of -- we will talk about some of the problematic issues related to LRE, but IDEA requires that a FAPE be provided in an LRE, in a least restrictive environment.

When IDEA was passed, many children with disabilities were excluded from school altogether. They had no right to go to school.

So many children with disabilities had no access to an education at the time. So LRE was based on the concept of inclusion.

And of course, we know that many children with disabilities can benefit from inclusion, but there are some language and communication needs where LRE will make a big impact on placement.

Specifically a negative impact, as we've seen in the history of Deaf education. There have been some adjustments in the law. Many people from the Deaf community have done a lot of education that LRE for d/Deaf/Hard-of-Hearing people does not necessarily mean one Deaf child going to their local school. It could mean that. But it does not always mean that.

There have been some changes in the law, so now in an IEP there will be discussions for educational placement, specifically for d/Deaf/Hard-of-Hearing children, that the IEP team is required to consider.

And those are specifically related to communication and language and they need to think about direct communication with a teacher or communication through an interpreter.

And so this has directly challenged our notion of Deaf ed placements and a lot of Deaf children, of course, have hearing parents. I'm one of those people, a hearing parent with Deaf children. And these people not being professionals, not being lawyers, they follow what the school tells them. And the school says, well, we'll include them here in your local hearing school without considering the language access that the child needs.

So there have been a lot of misunderstandings about what LRE means and how that affects placement. And it's something that the team, the IEP team, needs to discuss to consider how language access should be a factor in LRE and if that means that a child should be placed somewhere differently than their local school.

The time line for these are slightly different. IEPs last a year, IFSPs last six months, but the other differences between the two of them are rather negligible.

I feel like you probably need a stretch break at this point. You've done a lot of sitting and listening, a lot of slumping over at your table. I'm not offended. I realize it's not me. So what we are going to do now is we are going to get back into some small groups. You can use the same groups you used before, you can mingle, you can move about the room, it's up to you. I would like for you to pick one, maybe two of the bullets that are on the screen right now. So center-based EI, home-based EI, school setting or looking ahead, pick something else if you want, and I'll maybe move this easel that I have got here.

Think about where families face situations that involve the ADA, that involve 504, and/or IDEA.

And what would be helpful for families to think about in these situations?

If you're thinking about center-based EI in your state, how might a family encounter these laws and what should they think about?

Go ahead and get into your small groups. I'll give you about 10 minutes on this one and talk about these laws and how they apply to these settings.

>> All right. Hands on our heads, I'm going to fall, I'm going to injure myself, look at me!

I wanted to give you enough time to be able to discuss altogether. Does anyone have anything interesting to discuss from your group?

Does anyone want to share?

Okay. Yes. Do you want the mic?

Is.

>> I was talking to Francesca from poo law and I find out they don't do that many -- because they don't have the manpower to where she's from and I'm in shock because some of the students obviously with different types of disabilities, they probably just need accommodations instead of an IEP. And she said to me that they don't do that many 504 plans. I just learned something today.

>> Thank you for sharing that. Yes. Some of the things that we have seen, finances not always upon limited on accommodations, the law is not supposed to be limited related to finances, but life happens. So we're just waiting for families to sue. I don't know.

I mean, it's not a good answer. Any other comments from other groups that want to share?

Going once!

Going twice!

All right. Okay. Go ahead.

My story's a little bit different than most parents and the reason is because I'm a Deaf parent. I have a son who wears cochlear implants, bilaterally, he uses sign and spoken language. And at the time that the home-based center was established, we had an IFSP.

And I knew the basics, but going into the details was different from my experience, having my son, a Deaf mother with a Deaf son, related to services on learning how to use his implants, on working with spoken language skills. And I had to make sure that I found someone who already had the experience working with Deaf parents in that area. And it's a little easier for me because I already knew who some of those people are because I'm a teacher of the Deaf in my state. But still, it was a little overwhelming for me.

And I wanted to -- I had the discussion with her that I had spoke about the IFSP transitioning to the IEP and several years later the state system wanted to change it to a 504, but I just had this feeling, wasn't a good idea for my son, for some reason. And I know some of you, you know, we'll change to a 504 and it was successful for that student and it depends what state you're in. But for me, I was like hmmm, and sure enough I made the right decision, because my son, we found out that he had ADHD, he has sensory processing disorder, and I was like, oh, so we had to add even more services. If we had the 504, it wouldn't have been a good fit.

So related to her group when I was discussing with them, when we work with Deaf parents, Deaf parents also have access to communication, making sure that parents know when they're working with families, that it's very important that they know that a Deaf parent has full access.

Does anybody else have a burning comment?

If it's not burning, I mean, I'll accept that. Any more comments?

I'll move on.

So we have a lot of questions that come up later, tomorrow, next week, next year. Families will contact me, I contact them with various questions. And so we provide a lot of resources and we can provide even more.

Sometimes parents, they want information, general information. And it really depends on a specific with that particular parent's or family's needs. So the American Society for Deaf children, that's a great resource. And I'm actually on their board, just letting you know. I'm not getting any benefits or pay back saying I'm on their board, but I'm a parent and a professional, and I'm just letting you know.

My term will end soon. But our organization, ASDC, we support children who are d/Deaf/Hard-of-Hearing. And they also have a conference. And at Gallaudet University we have a lot of resources as well at the Clerc Center.

This is a network of attorneys and advocates, counselors and advocates, that focus on special education disability law issues. If you're finding that you need more than general information or you're thinking of involving a lawyer, you'll want to connect with resources in your state before you start the process. Don't wait until after it happens.

So you want to connect with resources in your state that are aware of state specifics. And you all have federal laws within your state law that can add additional protection and requirements.

And also work with your state. You will see the COPAA, that's also your specific state's parent training and information center. Of course, there are other resources and I've provided a few here. And also, I just -- you're more than welcome to take a photo, but if you see on the slide on the EHDI there's an attachment, I think you can click on that and see my slide. I think everyone has access to that slide?

Do we have access?

Ah!

Okay, thank you.

So I want to give enough time for questions and comments. My Uber is arriving at 4:45 for my flight.

But I want to give enough time for any questions. And I have really appreciated all of you coming out here. I know it's the last session of the day!

So it's a lot of heavy information about the ADA and the 504 and the IFSP and the IDEA.

So here's my business cards if you would like. They're up here.

We have a few minutes for questions.

Or comments.

>> I have a question. I'm a pediatric audiologist so I have a lot of families that ask me a lot of questions about IEPs, 504 plans, and I know the basics. Can you just explain a little bit about the difference between an IEP and a 504 plan and like are they losing a lot of rights or things like that if they do go from an IEP to a 504?

Can you explain those differences so I can guide families better when they're making that choice?

>> Yeah, just a brief description right now.

There's another presentation maybe you've seen. The NAD subject, they also have columns where there's one that talks about 504, IDEA, and the individual education through free -- it's more than access for accommodations. You'll see that the 504, it has accommodations but they are not the same accommodations for like the rights of parents, the rights to call a meeting at the same time, what are the procedures, they're very different.

And you'll see that on the list. There's the right -- there's all sorts of information. The rights are very different. There's less with the 504. There's not a specific right to appropriate education. 504 is more about access, not the right to access with education. So it's a little different.

>> Hi, Chris. We met on Zoom.

>> I'm happy you came.

>> Yeah, this has been great!

Would you comment from your perspective as an attorney on the impact of FAPE from the Rowley Supreme Court to the Andrew case and just what you perceive as what we can advocate for FAPE now that the -- has set precedent?

>> I'm going to watch the time on this because I'm going to back up a little bit. Some of you may not know about Rowley. In 1972 -- I'm sorry 1982 there was a Supreme Court case which identified what FAPE is and the Deaf child was in first grade at the time of this suit.

So what's going on in school, wearing hearing aids, was at grade level and her parents wanted an interpreter. Her parents were Deaf.

And they wanted the best education. The court said no, she's on grade level, she's fine, this is the best education. This is a free and appropriate education.

This was in 1982, so it was many years ago now. And different courts were saying that the education benefits were a little bit different. We could have very minimal, and then other courts would say, umm, we need to do the best we can. We need substantial, not doing the bare minimum. So in 2017 Andrew -- this is not a Deaf case. I forget the disability. I don't remember what the disability was. It might have been autism. I don't remember. But anyway, the Supreme Court explained more and said this was overruled. They overruled Rowley because of the educational benefit. However, real life since has not been different.

So that leads to the specific question of the real life impact. I'm not sure if we're seeing much difference.

But I will add it depends on representation. When you're representing kiddos with disabilities, you need to find the strongest talking points possible, but they are not widespread changes, so you need to make sure that you're advocating for yourself and making sure you are doing what's best.

>> Hi, I'm a parent. My children have bilateral loss and unilateral loss. Is there federal protection in IDEA that a state can't disqualify your child based on a decibel level of their hearing loss?

>> So the federal law doesn't have specific decibel levels, but you're right, that the states have a lot of flexibility.

For specific disability groups. What state are you in?

So I think for Hawaii it's going to depend.

Yeah, I know that that's not helpful. But make sure you grab one of my business cards and we can discuss more later. Because that happens often, when we discuss federal law, it's very general and it's general rule. And like education is very general, and then states can add protections, but they cannot take away or remove federal rights. So what we need to do is think about how real life in each state is a little bit different.

And a last question. Over here.

>> So I just want to add one thing. You were just talking about that Rowley case in elementary school level, right?

So hard of hearing, on grade level. You know, I always say be careful with that, because I've experienced that, the same thing with my son. They're like oh, he's on grade level. Oh, he doesn't need an interpreter. But then sixth grade, he himself went to his teacher of the Deaf and said I want an interpreter. Why?

Because the pace had become too fast. So there was far more information that he needed to access, more than elementary school level.

So things can change. Sometimes I feel like we need to make sure that people are aware of that. I don't want a child to fall through the cracks.

>> So that is a take-home message.

When our child progresses in school, in general, if a family accepts removing an accommodation, then the child's progress is going to get a lot harder to bring it back to add those additional accommodation needs and they will say he doesn't need an interpreter now. Well, it's going to get a lot harder without.

The grade could potentially be reduced and we don't want that. So we really want to make sure that we are careful with what we decide we are going to remove as far as accommodations, because it's going to be much harder for the school to add it back in. I'm not saying we're blaming the school, it can work, but it's a lot harder to add back an accommodation after you remove an accommodation. With that, my business card is up here and thank you so much. The I'm going to leave to get to my Uber. I'm so sorry. Thank you, bye-bye. Thank you, interpreter, thank you!