



What Speech-Language Pathologists and Audiologists Need to Know about IDEA and Special Education Law

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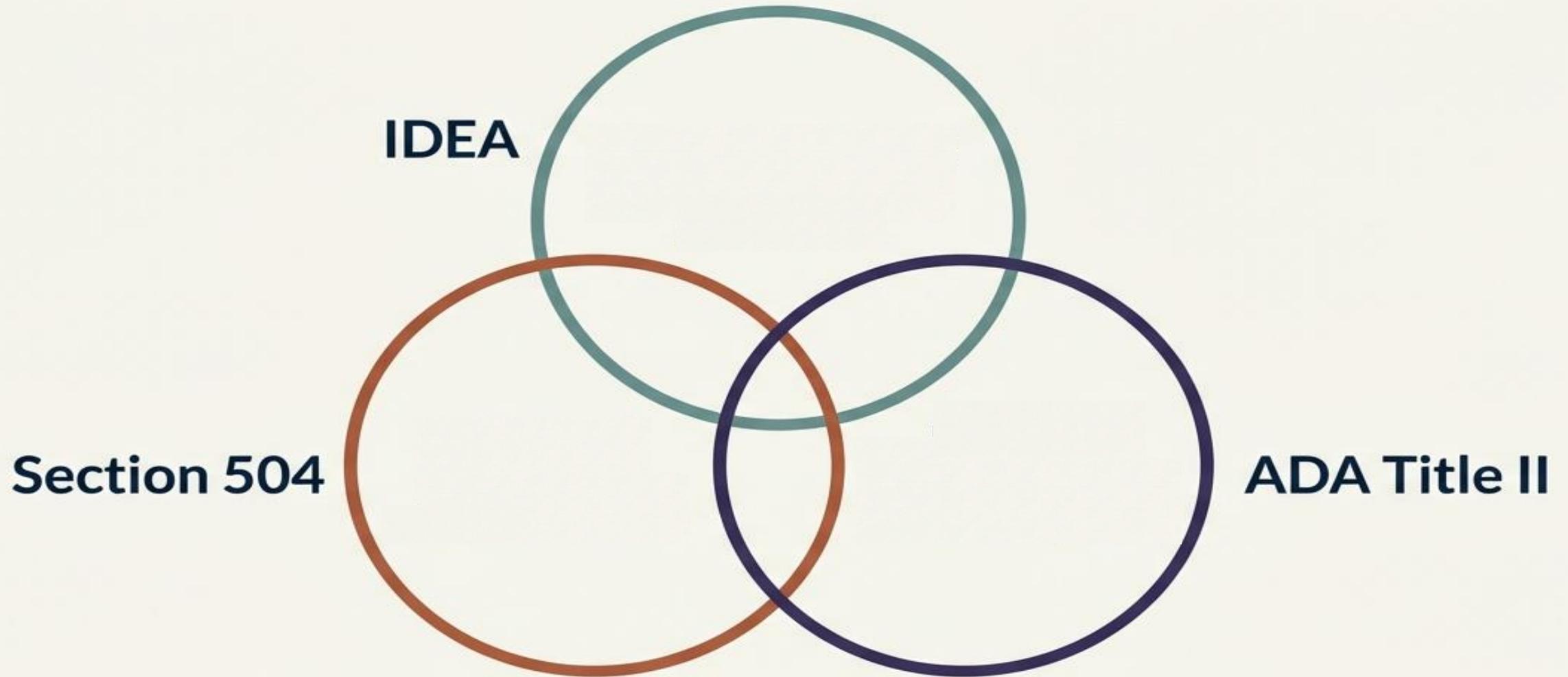
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Part I: The Legal Triad – IDEA, Section 504, and the ADA

The Three Pillars of Disability Rights



While all three **statutes** protect students, they have **different triggers for eligibility** and different standards for compliance.

Section 504 of the Rehabilitation Act of 1973



Nature of the Law: A civil rights/anti-discrimination statute. 29 U.S.C. § 794(a).

Definition of Disability: A physical or mental impairment that *substantially limits* one or more *major life activities*. 29 U.S.C. § 705(20)(B).

Mitigating Measures: Eligibility must be determined *without* regard to the ameliorative effects of mitigating measures (e.g., hearing aids, medication). 42 U.S.C. § 12102(4)(E).

Section 504 of the Rehabilitation Act of 1973



Major Life Activities:

- caring for oneself, performing manual tasks, seeing, **hearing**, eating, sleeping, walking, standing, lifting, bending, **speaking**, breathing, **learning**, **reading**, concentrating, thinking, **communicating**, and working....
- ... operation of a major bodily function, including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

42 USC § 12102(2)



Example: Eligible Under 504

A student with a hearing impairment who makes "strong educational gains" and does not need specialized instruction might still need accommodations or receive **speech therapy** or **audiology services** under a Section 504 plan to because their disability limits major life activities such as speaking, hearing, and communicating.

Elida (OH) Local Sch. Dist., 12 ECLPR 93 (OCR 2014).



The Americans with Disabilities Act (ADA)

Nature of the Law: A broad mandate to eliminate discrimination in public services, regardless of federal funding. 42 U.S.C. § 12132.

- **The "Effective Communication" Standard:** Public entities must ensure that communication with students with disabilities is "as effective as" communication with others. 28 C.F.R. § 35.160(a)(1).
- **Primary Consideration:** Schools must give "primary consideration" to the auxiliary aid or service requested by the student/parent. 28 C.F.R. § 35.160(b)(2).



Example: Protected by the ADA

A high-performing student with hearing loss has an IEP that provides an FM system, which satisfies FAPE (the "floor of access"); however, the student requests CART (real-time captioning) to fully participate in a fast-paced debate club interaction, and under the ADA's "effective communication" standard, the school may be required to provide CART even if the IEP does not require it.

Note: The FM system was enough to satisfy the minimum requirements of IDEA, but the student still had rights under ADA.

K.M. v. Tustin Unified Sch. Dist., 725 F.3d 1088 (9th Cir. 2013).

The Individuals with Disabilities Education Act (IDEA)



Nature of the Law: A federal grant statute providing an affirmative duty to provide a Free Appropriate Public Education (FAPE). 20 U.S.C. § 1400(d)(1)(A).

The Eligibility Equation:

- Requirement 1: The child must fit the criteria of one or more of thirteen specific disability categories. 20 U.S.C. § 1401(3)(A)(i); 34 CFR 300.8.
- Requirement 2: By reason thereof, the child *must need special education and related services*. 20 U.S.C. § 1401(3)(A)(ii).



Basic Steps to Qualify for and Receive Special Education

1. Referral
2. Evaluation
3. Eligibility Determination
4. IEP Development
5. Placement Determination
6. IEP Review
7. Re-Evaluation



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Key Term: Child Find

20 U.S.C. § 1412(a)(3)

34 C.F.R. § 300.111



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Evaluation:

- Clinicians treat diagnosed disorders.
- Students become eligible for special education services under IDEA because they fit the criteria of one or more categories, not because they have a diagnosis.
- Diagnoses are not eligibility categories; likewise, eligibility categories are not diagnoses.
- For example, a student diagnosed with Autism Spectrum Disorder (ASD) (F84.0) under the DSM-V *is not automatically entitled to special education services under the eligibility category of Autism.*



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Requirement 1: IDEA Eligibility Categories

Specific Learning Disability (SLD)

Other Health Impairment (OHI)

Autism

Speech or Language Impairment

Emotional Disturbance

Visual Impairment, Including Blindness

Deafness

Hearing Impairment

Deaf-Blindness

Orthopedic Impairment

Intellectual Disability

Traumatic Brain Injury

Multiple Disabilities

Developmental Delay (ages 3-9)

So where do communicative disorders fit in?



Relevant Eligibility Categories for Communication Disorders

A student with a communicative disorder could potentially be eligible for special education services under any of the IDEA categories, but these are common:

- **Speech or Language Impairment:** A communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance. 34 C.F.R. § 300.8(c)(11).
- **Hearing Impairment:** An impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness. 34 C.F.R. § 300.8(c)(5).
- **Deafness:** A hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification. 34 C.F.R. § 300.8(c)(3).
- **Specific Learning Disability:** A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written. 20 U.S.C. § 1401(30).



Requirement 2: Adverse Impact

- For a child with a communication issue, the most (but not only) relevant eligibility category is "Speech or Language Impairment." The statute and regulations define this as:
- "[A] communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, **that adversely affects a child's educational performance.**" 34 C.F.R. § 300.8(c)(11).



Example: Eligible Under IDEA

A student with weaknesses in expressive language, grammar, auditory memory, and vocabulary reads below grade level and demonstrates a "slower" rate of learning in reading comprehension and writing skills. He also struggles to accurately produce specific sounds (s, z, sh) during conversational exchanges. Because of these adverse effects, the school district determined that K.D. required "specially designed instruction" rather than just accommodations. This child is eligible for special education services under IDEA, including 6 hours per week of direct instruction from a special education teacher to address reading and writing deficits.

K.D. ex rel. J.D. v. Crown Point Sch. Corp., 2012 U.S. Dist. LEXIS 11520 (N.D. Ind. 2012).



Part II: The SLP and Audiologist as IEP Team Members



The Roles of SLPs and Audiologists as IEP Team Members

1. Evaluation & Eligibility
2. IEP Development
3. IEP Implementation
4. Manifestation Determination Meetings



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Your Job: Evaluation & Eligibility

- **Holistic Evaluation:** Advocacy requires ensuring the evaluation is "sufficiently comprehensive to identify all of the child's special education and related services needs," utilizing a variety of assessment tools rather than a single measure.
- **Distinguishing Disorder vs. Difference:** SLPs must differentiate between a communication disorder and variations due to cultural background, dialect, or limited English proficiency; a student with only a dialectal difference is ineligible for special education.
- **Interpret Results:** Explain instructional implications of evaluation results to the team. 34 C.F.R. § 300.321(a)(5).



Your Job: Evaluation & Eligibility

- **Documentation of Adverse Effect:** Demonstrate that the communication impairment "adversely affects" educational performance.
 - **Beyond Academics:** Educational performance is not limited to academic grades, it includes impact on social, vocational, and functional performance, such as avoiding classroom participation due to communication issues. ***This includes adverse impacts on their behavior.***
- **Assistive Technology (AT) Evaluation:** Advocate for an AT evaluation if required for FAPE; this includes low-tech (picture boards) and high-tech (voice-output) devices.



The Roles of SLPs and Audiologists as IEP Team Members

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Your Job: IEP Development

- Annual IEP Meetings are held at least once a year.
- Re-Evaluation for Eligibility Meetings are held every three years.
- Your presence and participation is sometimes required, usually preferred, and almost always in the best interest of you and the child.
- **Practice Tip**: Make sure those in charge of scheduling IEP meetings (case manager, Department Chair, SPED Secretary, etc.) knows that you want to be invited to ALL meetings involving children on your caseload, even if you aren't a "mandatory" member of the meeting—because you are *always* a member of the IEP team.



The Core IEP Team: Mandatory Members

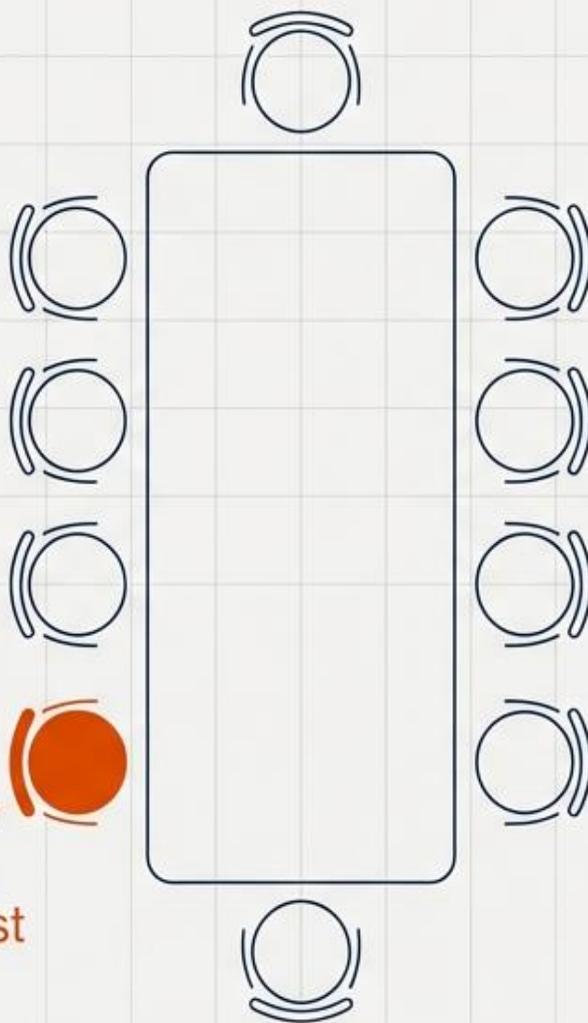
- **Parents**
- **Special Education Teacher or Provider**
- **Regular Education Teacher**
- **LEA Representative:** A qualified representative of the agency (school district) that is knowledgeable about the availability of agency resources. Usually a building or district level administrator.
- **Individual Interpreting Evaluation Results:** Team must have an individual who can interpret the instructional implications of evaluation results.
- **Child, Transition Agency Representative, Plan C Coordinator:** Mandatory sometimes, if applicable and appropriate.

A Seat at the Table

Mandatory Member

If the child has a communication disorder, the SLP is an essential Related Service Provider or Special Education Teacher.

SLP / Audiologist



The Excusal Rule

1. Requires written agreement between parent and agency.
2. Written input must be submitted prior to the meeting.

Your Job: IEP Development



- The multidisciplinary nature of the team is intended to prevent the "fragmentation of services and supports" that occurs when professionals work in isolation.
- For complex disorders such as Auditory Processing Disorder (APD) or Autism, a multidisciplinary team is explicitly recommended to collect the information necessary to obtain a "comprehensive description of the child's strengths and challenges."
- Speak up! Nobody else in the room has the knowledge or experience that you do in your field.



Your Job: IEP Development

- **Measuring Present Levels:** The Present Levels of Performance statement serves as the foundation for developing the IEP and measuring the student's short- and long-term success.
- **Scope of Data Collection:** Evaluations must encompass multimodal, multisource, multidomain, and multi-setting documentation. SLPs must go beyond standardized scores to include dynamic assessment, language samples, and observation of the student in the general education setting.
- **Defining Educational Impact:** The Present Levels must describe how the disability affects involvement and progress in the general education curriculum.



Your Job: IEP Development

Present Levels → Goals

- The Present Level of Academic Achievement and Functional Performance (PLAAFP) serves as the baseline and justification for every goal written.
- If a goal is written for a specific skill (e.g., articulation of /r/, self-advocacy for FM system use), the specific deficit and current data point must appear in the PLAAFP first.
- If the student's present levels of performance indicate that they are "exceptional" in that skill area, there must be an IEP goal developed.



Your Job: IEP Development

- **Step 1 (PLAAFP):** Identification of the area of need based on assessment data (e.g., "Student recognizes 5/20 vocabulary words").
- **Step 2 (Adverse Effect):** Description of how this gap hinders classroom participation (e.g., "Student cannot follow science lab instructions").
- **Step 3 (Goal):** The projection of where the student can reasonably be in one year with specially designed instruction.



Your Job: IEP Development

The SMART Goal Checklist for Communication:

- **S** - Specific
- **M** - Measurable
- **A** - Achievable
- **R** - Relevant
- **T** - Time-Bound



Your Job: IEP Development

The SMART Goal Checklist for Communication:

- **S – Specific**

- Target a specific area of need (e.g., morphology, self-advocacy, auditory processing) rather than a broad domain like "improve communication."
- *Required Component: **The Behavior.*** Clearly define the observable action the student will perform (e.g., "will produce /s/ in initial position," "will check hearing aid battery").



Your Job: IEP Development

The SMART Goal Checklist for Communication:

- **M – Measurable**

- include criteria that allow progress to be tracked objectively
- *Required Component: **Performance Criteria***. Define the level of mastery (e.g., "80% accuracy," "4 out of 5 opportunities").
- *Required Component: **Method of Evaluation***. State how data will be gathered (e.g., "structured observation," "slp data collection").



Your Job: IEP Development

The SMART Goal Checklist for Communication:

- **A – Achievable**

- Realistic for the student to accomplish within the one-year IEP cycle.
- *Required Component: The Condition.* Describe the circumstances/support under which the behavior occurs (e.g., "Given a visual schedule," "Given a teacher prompt")

- **R – Relevant**

- Must relate to the student's educational needs and enable progress in the general curriculum.
- Goals should address functional outcomes, such as navigating social situations or completing assignments.

- **T - Time-Bound**

- Must state the timeframe for achievement, typically by the end of the IEP year.



Your Job: IEP Development

Specificity in Service Delivery: The Rule Against Ranges

- The IEP must state the projected date for the beginning of services and the "anticipated frequency, location, and duration" of those services.
- The IEP must clearly specify the nature and type of services so that the level of the agency's commitment of resources is clear to parents and other IEP team members.



A Cautionary Tale

Los Angeles Unified School District v. A.O.

- An IEP that offered "1 to 5 sessions" of audiology per month and "1 to 10 sessions" of speech therapy per week violated the IDEA.
- Broad ranges fail to offer a clear commitment of resources, leaving parents unable to gauge whether the offer is reasonably calculated to enable progress.
- **Takeaway for Practitioners:** Avoid writing service times as ranges (e.g., "30-60 minutes"); precise frequency and duration (e.g., "60 minutes per week") are legally required to ensure the offer of FAPE is enforceable.



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Your Job: IEP Implementation

- Establish a systematic method for measuring progress toward specific IEP goals; data collection cannot be an afterthought.
- Use goal-specific probes, frequency counts (e.g., disfluencies per 100 words), and percentage of accuracy on structured tasks to track objective growth.
- Reports on the child's progress toward annual goals are required by federal law to be issued at least as often as parents of nondisabled children receive report cards.
- Reports must be "data-based," detailing the extent to which progress is sufficient to enable the student to achieve the goal by the end of the year; ***vague narratives without data may violate the IDEA.***



Your Job: IEP Implementation

- Related services are developmental, corrective, and other supportive services required to assist a child with a disability to benefit from special education. 34 C.F.R. § 300.34(a).
- Examples specifically listed in the statute include **speech-language pathology, audiology services**, interpreting services, and parent counseling and training. 20 U.S.C. § 1401(26)(A).
- In some states, speech-language pathology is defined as "special education" (stand-alone service), while in others it is solely a "related service." Audiology is typically a related service. 34 C.F.R. § 300.34(c)(1).



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Your Job: Manifestation Determination

Provide insight into how a child's communication needs impact their academic performance or behavior:

Manifestation Determination Review (MDR):

- When a child with a disability is disciplined and removed (e.g. suspended) for extended periods of time, an IEP meeting is held to determine if the behavior:
 - (1) was a manifestation of their disability;
 - (2) was a direct result of the school's failure to implement the IEP
- These meetings are scheduled with far less notice than annual IEP meeting. SLPs and Audiologists are frequently left out.
- Your presence at these meetings could be crucial in protecting the student's rights and avoiding a FAPE violation.



Your Job: Manifestation Determination

Was it a manifestation of their disability?

- You understand more about the adverse impact of a communicative disorder on a student's behavior than anyone else on the team.
- Examples:
 - An audiologist can clarify that a student's failure to follow commands was not a choice but a result of **auditory fatigue** or an inability to hear in a noisy classroom environment.
 - The SLP can demonstrate that a behavior was a "maladaptive communication attempt" caused directly by the student's lack of functional expressive language skills.



Your Job: Manifestation Determination

Was it a result of failure to implement the IEP?

- If a student with hearing loss acted out during a lecture, the audiologist may ask: Was the FM system working? Was the teacher wearing the microphone? If not, the behavior may be a result of the school's failure to provide access.
- If a nonverbal student became aggressive, an SLP might ask: Did they have access to their Augmentative and Alternative Communication (AAC) device at the time of the incident?



Questions?