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The Voice of the Unheard: An Evaluation of and Proposed Solution to the Special Educational Needs of Hearing Children of Deaf Parents

Julie Ruschin

I. INTRODUCTION

The needs of hearing children of deaf parents have been long overlooked and ignored by both the scientific and legal community. Psychological studies show that a child must first be exposed to the language before he can learn it. For a child to learn a spoken language, such as English, the child must hear the language spoken. The amount of language exposure necessary for learning will be discussed, taking into account various psychological works on the subject. Simple exposure to language is not enough for its acquisition. Language acquisition must include not only hearing a language spoken, but also having it directed at the learner in a conversational, interactional manner. For hearing children of deaf parents, it is not always easy to gain exposure to spoken English. It is entirely up to the discretion of the parent(s) how much spoken language the child will hear. This note examines the needs of these children and their families and discusses the special challenge that these families face in educating their children. Because spoken language acquisition requires something that a deaf parent may not be able to provide and because of the

* J.D. Candidate, May 2004, University of California, Hastings College of the Law. B.A., University of California, San Diego (2001). I give my heartfelt thanks to Coren Grayson for making me aware of the struggle these children face. I also thank my father for all his help, advice, and words of motivation. I hope that I make you proud. Finally, I thank Eddy Piedra, without whom, I would never have had the energy or patience to complete this project.

1. DANNY D. STEINBERG, AN INTRODUCTION TO PSYCHOLINGUISTICS 17 (1993).
2. John D. Bonvillian et al., Languages and Language-Related Skills in Deaf and Hearing Children, 12 SIGN LANGUAGE STUDIES 211, 227 (1976) (discussing the conditions necessary for language acquisition).
3. Id.
incredible importance of fluency in spoken language for any hearing person, the State should create programs, within its already existing educational system, that would ensure that all hearing children master spoken English.

The duty to educate the people is the responsibility of the State. This duty extends to each person residing within the State, including those with special educational needs. The State, in order to fulfill this obligation, should set up special programs to ensure that the hearing children of deaf parents receive the same educational opportunities as hearing children who are born to hearing parents. The only way to guarantee that hearing children of deaf parents have the same mastery of English as their schoolmates on the first day of elementary school is to allow for early State intervention. Language acquisition is easy and nearly effortless only during a brief period in a person's life. If that period passes before language has been learned, the child may be harmed. As a result, early State intervention is necessary to ensure that hearing children of deaf parents learn spoken English easily and enter elementary school with the same level of English proficiency as their schoolmates born of hearing parents.

II. THE PSYCHOLOGY OF LINGUISTICS AND LANGUAGE ACQUISITION

A. HOW LANGUAGE IS LEARNED

The process of learning language begins even before birth. Within a few days of birth, infants are highly responsive to speech sounds and pay them special attention that they do not show other environmental noises. Psychologists hypothesize that this special attraction to speech sounds is a result of in utero exposure to the sound of the mother's voice. Data suggests that infants are "endowed with innate perceptual mechanisms which are attuned to the phonological characteristics of human language ..." This innate mechanism to distinguish speech suggests that hearing language spoken is an important key to a person's development and

4. Wiltwyck School for Boys, Inc. v. Perry 219 N.Y.S.2d 161, 172 (1961) ("The education of its children is a solemn duty which the State has assumed by virtue of its historic power as parens patriae.").
6. Id.
8. Id.
9. Id.
10. Id.
maturation.

"Since children are not born with the knowledge of any particular language, it is necessary that they be exposed to the language in order to learn it."\textsuperscript{11} It is extremely difficult to learn a spoken language like English to native proficiency, "through any other channel, except by simply hearing it."\textsuperscript{12} Yet simply hearing spoken language is not sufficient for language acquisition.\textsuperscript{13} In order for children to learn the meanings of the speech sounds they hear, they must be exposed to the objects to which words refer.\textsuperscript{14} For example, if a child hears the word "dog" a thousand times, the child will not learn the meaning of the word unless the child is shown the object to which it refers, namely a dog or picture of a dog.\textsuperscript{15} Hence, for a child to learn the meaning of the word, not only must the child hear the word spoken, but also, at the same time the word is spoken, some environmental experience must occur.\textsuperscript{16} This understanding of the meaning of words is critical to language acquisition.\textsuperscript{17} Speech understanding must precede speech production.\textsuperscript{18} Speech production is dependent and follows from speech understanding.\textsuperscript{19}

In order for a child to learn a first language, the child must interact with at least one user of that language.\textsuperscript{20} The person with whom the child interacts, the child’s “model,” must fulfill three conditions.\textsuperscript{21} First the model must be “physically and psychologically available” for communication.\textsuperscript{22} This means that the model must be present with the child and able to engage in a dialogue with the child. Second, the model must use a wide range of grammatically correct sentences and must do so from the beginning of speech interaction with the child until the child has mastered the syntactic system.\textsuperscript{23} Syntax refers to the arrangement of words in a sentence.\textsuperscript{24} So, in order for a child to learn how to properly form sentences with correct word order, the child must, from the outset, be spoken to in syntactically correct sentences.\textsuperscript{25} Finally, the child’s model must initiate conversation and reply sensibly and grammatically to what the

\begin{itemize}
  \item \textsuperscript{11} \textsc{steinberg}, supra note 1 at 17.
  \item \textsuperscript{12} Jenny L. Singleton & Matthew D. Tittle, \textit{Deaf Parents and Their Hearing Children}, 5 J. \textsc{deaf stud.} \& \textsc{deaf educ.} 221, 223 (2000).
  \item \textsuperscript{13} \textsc{steinberg}, supra note 1 at 17.
  \item \textsuperscript{14} \textit{Id}.
  \item \textsuperscript{15} \textit{Id}.
  \item \textsuperscript{16} \textit{Id}.
  \item \textsuperscript{17} \textit{Id}.
  \item \textsuperscript{18} \textit{Id} at 17-18.
  \item \textsuperscript{19} \textit{Id}.
  \item \textsuperscript{20} Bonvillian, supra note 2 at 227.
  \item \textsuperscript{21} \textit{Id}.
  \item \textsuperscript{22} \textit{Id}.
  \item \textsuperscript{23} \textit{Id}.
  \item \textsuperscript{24} Webster’s \textsc{new world pocket dictionary} 293 (2d ed. 1993).
  \item \textsuperscript{25} Bonvillian, supra note 2, at 227.
\end{itemize}
child is saying. Because the child’s model must engage in conversation with the child, the child cannot acquire language, proper and complex language, if he merely listened to or observed the use of language by models on television.

Humans, however, are specially equipped to teach language to their children. Psychologists use the term “parentese” to refer to the short and simple language that most children receive when they are young. Parentese is the speech that parents usually use when speaking to their children. However, the use of parentese is not limited to parents speaking to their children. People naturally adjust their speech to the linguistic level they think the hearer will understand. Even children tend to use parentese when they are speaking to others younger than them. Parentese is marked by several common and distinguishing characteristics. Most parents talk to their children about the things that are going on in their current environment and sentences tend to be short and simple. Also, when parents speak to their children, they tend to speak more slowly and with a higher pitch than they would if speaking to another adult or even an older child who has a firm grasp of language. These characteristics of parentese are ones which appear to serve to make the acquisition of language understanding and production easier for the learner. Although parentese may not be necessary for the acquisition of language, it is likely that children who are exposed to parentese learn to understand spoken language faster than children who are not exposed to parentese. The process of language acquisition is much more complicated and requires much more than simple exposure to the language; however, for this note, the understanding that exposure to a language is a necessary prerequisite for learning that language is sufficient to understand the special educational needs of hearing children of deaf adults. If a child grows up in a deaf household in which no or little spoken language is used, the child will not receive the exposure necessary to learn spoken language.

1. A Case Study of Language Acquisition in Hearing Children of Deaf Adults

In the late 1970s, psychologists conducted a linguistic study of two

26. Id.
27. Id.
28. STEINBERG, supra note 1, at 22.
29. Id.
30. Id.
31. Id. at 23.
32. Id. at 22.
33. Id.
34. Id.
35. Id.
36. Id. at 23.
37. Id.
children of deaf parents. The first child, called Jim in the study, was 3 years old at the onset of the study and the other child, called Glenn, was one year and eight months old. Both brothers were observed and studied for a little more than six years. The two normally hearing children were cared for almost exclusively by their mother. Their mother had been deaf since birth and had "severely limited oral language." The only observed oral communication to the children was the mother’s occasional use of the word “No.” The father, who did not participate in child care, was also deaf and used even less oral language than his wife. The two children, with no hearing relatives or family friends in the state, had little contact with hearing adults. Jim and Glenn had some exposure to spoken language. Both frequently watched television with the sound on and Jim occasionally played with the neighborhood kids, although only to a limited degree.

An initial evaluation of Jim showed that although his hearing was within normal limits, his linguistic abilities were well below average for his age level. Jim’s mother testified that although she had tried to get Jim to speak when he was a baby, he did not say his first words until he was approximately 2 and a half years old. On average, children say their first word at about 10 months of age. At the initial evaluation, it was found that Jim had a “severe articulation problem” and some of his utterances were unintelligible. His elicited speech was also well below average for his age level, and he made no spontaneous utterances. In addition, his comprehension abilities appeared to be poor, “his receptive language abilities were below those expected for his age.”

Psychologists commonly measure language development with an index called the “mean length of utterance (MLU),” which is the mean number of morphemes a person uses per utterance. Morphemes are, “[m]eaning-bearing linguistic units even smaller than words . . . such as un-,” which

39. Id.
40. Id.
41. Id. at 37.
42. Id.
43. Id.
44. Id.
45. Id.
46. Id.
47. Id.
48. Id. at 39.
49. Id. at 38.
50. STEINBERG, supra note 1, at 5.
51. Sachs, supra note 38, at 39.
52. Id.
53. Id.
54. TAYLOR supra note 5 at 229.
bears the meaning of \textit{not} in words like \textit{unkind}, \textit{unloved}.

MLU increases with age, with children between the ages of 2 and 2 and a half having a MLU of about 2.5, meaning they utter an average of 2.5 morphemes per utterance, and children between the ages of 4 and 5 having an average MLU of about 7. The typical adult MLU is approximately 8.5.

During the first month of observation, Jim's MLU was determined to be 2.92, "clearly not the length expected for his age."

This below-average linguistic ability was presumably due to Jim's lack of opportunities to acquire language and was not due to any biological deficiencies in Jim. In support of this idea, the psychologists conducting the study observed that Jim appeared to be trying to express relatively complex ideas, but was using utterances that were much shorter than would normally be needed to express those ideas. Additionally, Jim's speech exhibited poor grammar and syntactic skills.

During the study, Jim attended biweekly sessions with one of the psychologists. These sessions "provided language enrichment through conversations about toys and pictures." Even during the first month of these sessions, Jim's linguistic abilities improved. After Jim attended six sessions of therapy over a period of two months, his syntactical and grammatical skills improved and his language was much more similar to typical child speech. Once Jim began to interact with an adult on a one-on-one basis, he showed dramatic acquisition of the structures of English.

Like Jim, Glenn exhibited delayed language acquisition. However, his language development was not as slow as Jim's, which the psychologists felt was due to the change in Glenn's environment once the study started. Once the study started, Jim's speech had improved and he spoke to and taught his little brother; in addition during the observation sessions, the adults spoke to Glenn.

Based upon observations over the six-year span, the psychologists drew some insightful conclusions about the process of language acquisition. Given that Jim's indirect exposure to language, through television, was not

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55. \textit{Id.} at 149.
56. \textit{Id.} at 229-30 fig.8-1.
57. \textit{Id.} at 230 fig.8-1.
59. \textit{See id.}
60. \textit{Id.} at 42.
61. \textit{Id.} at 42-44.
62. \textit{Id.} at 36.
63. \textit{Id.}
64. \textit{Id.} at 46.
65. \textit{Id.}
66. \textit{Id.} at 51.
67. \textit{Id.} at 48.
68. \textit{Id.} at 48-49.
69. \textit{Id.} at 48.
sufficient to teach him basic English syntax, it was concluded that language acquisition involves two processes: having ideas to express and learning the linguistic forms. In addition, it was found that using language in an interactional setting plays a major role in teaching children the rules of language.

The situation that existed in the family in the study could exist in any deaf family with hearing children. If the parents are mute or rarely speak and do not have hearing friends or relatives in the area, it may be difficult to expose the children to the linguistic input necessary for language acquisition. In the case of Jim and Glenn, the result of the children's lack of exposure to spoken language was a severely delayed language acquisition process, as evidenced by Jim's poor linguistic abilities. However, the study also showed that with minimal intervention and language exposure, any delayed acquisition could be overcome. Therefore, although hearing children of deaf parents may be at risk for speech and language impairment, early testing and intervention can aid the child to be as linguistically skilled as a hearing child born in a hearing family. Thus an implementation of a State program to test language ability in young children of deaf parents could serve as an invaluable tool in ensuring that these children learn to speak English with the same ease and proficiency as hearing children of hearing parents.

2. Critical Periods

Not only must a child be exposed to language individually in a conversational setting, but also this language exposure must occur during the child's critical period for language learning. A critical period, as referred to in biology, applies to situations in which the environment will trigger certain brain structures. This stimulation must take place during a certain window of time, the critical period. If a particular behavior is not stimulated and responded to within the critical period, the behavior never fully or correctly emerges. The most straightforward example of a critical period is imprinting. When a newly hatched duckling is first exposed to a moving stimulus, the duckling becomes attached to it and follows it everywhere. The function of the imprinting is for the ducklings to form
an attachment to their mother, which is likely to be the first moving object they see. Imprinting in ducklings can occur right after birth, increases in likelihood up to age 15 hours, and decreases in likelihood after 15 hours until it no longer occurs at age 32 hours.\textsuperscript{81} Thus there is only a short period of time in which a duckling can form an attachment to its mother. This time period is critical. After that time has passed, the ducklings do not formulate the immediate attachments that they form shortly after birth.\textsuperscript{82}

In terms of language, the notion of a critical period implies that there is a certain limited period of time in which a person can learn a language to native proficiency.\textsuperscript{83} After this period has passed, language may still be learned, but often it is done with conscious effort and is usually learned only to nonnative proficiency.\textsuperscript{84} For example, when trying to learn a second language in high school, many teenagers struggle and rarely achieve fluency regardless of how many hours of study they spend. It appears that the first six years are the critical period for learning a language to native proficiency.\textsuperscript{85} That is not to say that language cannot be learned outside of this period, but the learning is likely to be difficult and the speaker may never achieve native proficiency.\textsuperscript{86}

B. LANGUAGE LEARNING IN HEARING CHILDREN OF DEAF ADULTS

As exhibited in study of Jim and Glenn, spoken language acquisition can be difficult for hearing children growing up with deaf parents.\textsuperscript{87} The learning of language requires extensive exposure to that language and most deaf adults have not mastered spoken English.\textsuperscript{88} Thus many deaf parents must look to an outside source in order to ensure that their hearing child properly learns English. Professionals have expressed serious concern for potential spoken language delay in hearing children of deaf adults.\textsuperscript{89} Members of the deaf community challenge this concern because it is based upon the presumption that the child lacks adequate speech input.\textsuperscript{90} Studies show that as long as children have some exposure to normal hearing and speaking speakers (5-10 hours a week), they will develop speech and spoken language normally.\textsuperscript{91} If children are not exposed to

\begin{footnotesize}
\begin{itemize}
    \item 81. \textit{Id.}
    \item 82. \textit{Id.}
    \item 83. \textit{Id.} at 249.
    \item 84. \textit{Id.}
    \item 85. \textit{Id.} at 251.
    \item 86. \textit{Id.}
    \item 87. \textit{See generally} Sachs, \textit{supra} note 38 (psychological study profiling the language development of two hearing children of deaf parents).
    \item 88. Singleton, \textit{supra} note 12, at 223; \textit{Steinberg}, \textit{supra} note 1, at 17.
    \item 89. \textit{See} Singleton, \textit{supra} note 12, at 224 (explaining deaf person’s limited access to spoken English).
    \item 90. \textit{Id.} at 225
    \item 91. \textit{Id.}
    \item 92. \textit{Id.}
\end{itemize}
\end{footnotesize}
spoken language for these few hours a week, there is a risk of speech and language impairment.\textsuperscript{93} Thus, even though the child is fully hearing, he suffers, to a certain extent, the same disability as his parents; he is not able to fully understand and utilize spoken language.\textsuperscript{94} Despite the lack of any physical disability, the child suffers from the same learning disability.\textsuperscript{95}

In order to ensure that every hearing child receives the necessary exposure to spoken language, I recommend the implementation of State-funded programs that would provide a place for parents to bring their children and have them spoken to on a one-to-one basis in syntactically and grammatically correct English. Under such a plan, the State would not only provide language intensive sessions for the child, but require early and periodic evaluations of the child’s language development. If the State requires these periodic linguistic assessments, we can be assured that any child in need of increased language exposure would get it. For instance, if it is found that a child is suffering from moderate to severe delayed spoken language acquisition, the State would compel the parents to enroll the child in the program so that the child will gain the necessary exposure to spoken language. If children were brought to such a center at a young age, perhaps starting at age 1, the State would be ensuring that every child is given the chance to recognize his/her full potential for language acquisition. As evidenced in the study of Jim and Glenn, early intervention can prevent delayed language acquisition from becoming a permanent speech disability.\textsuperscript{96}

Opponents of State intervention take the position that there is no need for language programs for children of deaf adults. They claim that there is usually a grandmother in the picture or other family member with whom the child may interact orally. Or, if there is no nearby hearing family member, some have advised deaf parents to seek help from neighbors or friends.\textsuperscript{97} However, if deaf parents do not have any close hearing friends, they must look to someone outside their community for help in teaching their child spoken English. Neighbors are not really a viable solution to the problem. Today it is common not to know one’s neighbors. Perhaps greetings are exchanged in the hallway or at the mailboxes, but much familiarity beyond that is unlikely. No responsible parent would feel comfortable asking such a stranger to look after and teach his/her child. Thus deaf parents are still left with the obstacle of teaching their child how to speak. Some may resort to having the child watch television; however, as previously discussed, television is not sufficient to promote linguistic

\textsuperscript{93} Id.
\textsuperscript{94} Id.
\textsuperscript{95} Id.
\textsuperscript{96} Sachs, \textit{supra} note 38, at 46.
\textsuperscript{97} Edward E. Cooper, Deaf Parents of Hearing Children Handbook 6 (1979) (unpublished manuscript, on file with San Francisco Public Library).
Deaf parents are then left with limited options: expose the child to television and radio and hope that works, or else pay for a babysitter or therapist to come into the home and speak to the child on a regular basis. Neither of these choices is very appealing; on the one hand, the child’s linguistic development is put at risk and on the other, deaf parents are forced to pay extra simply because their disability prevents them from teaching their children proper spoken language. Yet education is not only the responsibility of the parents, but also that of the State. Thus, since this need for special language exposure is an educational necessity, the responsibility for providing it, when the parents are unable to do so, should fall squarely on the shoulders of the State.

C. WHY EARLY INTERVENTION BY THE STATE IS NECESSARY

Early intervention is necessary because of the relatively short critical period for language acquisition. The critical period in which a child can easily learn a language to native proficiency generally ends by age 6, however most states do not require children to attend school until they are 6, 7, or in some cases, 8 years of age.

Since parents are not required to send their children to school until age 6, in most cases, by the time the children are enrolled in school, it may be too late for them to learn spoken English with native proficiency. Without any early State intervention, there is no way to discover and prevent delayed language acquisition. Parents will not be compelled to send their children to school until they reach an age which is nearing the end of the critical period for language acquisition. Some jurisdictions do require parents to send their children by age 5. Although the child would then attend school before the critical period is supposedly completed, the critical period is simply an approximation and may end sooner or later than

98. See Sachs, supra note 38, at 37-39 (child’s exposure to television with sound was insufficient to teach him language).
100. TAYLOR, supra note 5, at 251.
101. Id.
103. TAYLOR, supra note 5, at 251.
104. E.g., FLA. STAT. ANN. § 1003.21 (West 2003).
105. TAYLOR, supra note 5, at 251.
107. TAYLOR, supra note 5, at 251.
When the issue is of such critical importance as a child’s ability to easily learn spoken language, the State should not risk the child’s welfare by waiting until it is too late to test for language acquisition.

One of the most dramatic indicators that the deaf have a poor grasp of English is that the reading performance of most deaf 16-year-olds is at least five years below their grade level. Hearing children born to deaf parents are going to rely on their parents to teach them language and unfortunately the parents do not have the oral skills necessary to help their children master spoken language. Acquisition of spoken language is important not only because it affects oral communication in general society, but also because a firm grasp of spoken English is necessary in order to read and write proficiently in English. Thus depriving children of the ability to learn spoken English with native proficiency not only deprives them of the ability to verbally communicate freely, but it also deprives them of the ability to easily comprehend and express complex ideas in written English.

III. LEGAL AUTHORITY MANDATING STATE IMPLEMENTATION OF LANGUAGE INTENSIVE PROGRAMS INTENDED TO EDUCATE HEARING CHILDREN OF DEAF ADULTS.

A. THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

The Individuals with Disabilities Education Act (IDEA) was enacted to ensure that children with disabilities have access to free appropriate public education. Congress found that “[I]mproving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation . . . for individuals with disabilities.” Within the definition of children with disabilities are children who are hearing impaired, including deafness, and children with speech and language impairments. If children are diagnosed as having one of these disabilities and by reason of such disability require special education and related services, they qualify for free special education under IDEA.

The goal of the education system should not simply be the education of those with disabilities and impairments, but also the prevention of those impairments whenever possible. Hearing children of deaf parents do not automatically qualify for special education under IDEA. Although there is

108. See id. (“the first six or so years . . .”).
109. Bonvillian, supra note 2, at 228.
110. See id. at 228-229 (poor grasp of English indicated by well below average reading abilities).
112. Id.
a risk and perhaps high probability that they will develop speech impairments, they are not an included group under IDEA. It is not until a particular child develops a language impairment that he will qualify for special education. Although hearing children of deaf parents can benefit from services intended to aid them after a speech or language impairment has developed, it would be much more beneficial to them to receive early intervention services which could prevent the impairment from ever developing. Because early testing can determine if a child is at high risk for developing a language impairment and because early intervention can prevent or at least retard any speech and language impairment, hearing children of deaf parents should qualify for special education even if their impairment has yet to manifest itself.

The Individuals with Disabilities Education Act also provides for infants and toddlers with disabilities. Congress found that there is an "urgent and substantial need" to enhance the development of infants and toddlers with disabilities. Because of this need, IDEA implemented a policy to provide financial assistance to States to develop and implement a statewide comprehensive system that provides early intervention services for infants and toddlers with disabilities and their families. Although this section of the Act provides for infants and toddlers, it only does so for those diagnosed as having a disability. Hearing children of deaf parents, although highly susceptible to suffering the same learning disability as their parents, do not show any signs at infancy of an actual disability of their own. The early intervention that is needed for these children is more of a pre-emptive one. What these children need is exposure to spoken language before they show any signs of developmental delay. As the psychological studies indicate, if the children do not receive the necessary language exposure, they will not learn the language with the ease of other hearing children. If the child is living in a house in which no or almost no language is spoken, it is known that the child is at high risk for developing a speech or language impairment. Once the child develops this impairment, he will qualify for special education. But because it is known that this impairment can be easily prevented by minimal early intervention, hearing children of deaf parents at high risk for developmental delay should be provided free appropriate public education even before they show signs of a disability within the meaning of the Act.

IDEA does contain a provision to provide for not only infants and...
toddlers with disabilities but also those who are at risk of having substantial developmental delays if they do not receive early intervention services. An at-risk toddler or infant is defined as a child, under the age of 3, who would be at risk of experiencing a substantial developmental delay if early intervention services are not provided. Yet the Act does not require states to implement a program designed to target and help these children. The Act simply provides that it is the policy of the United States government to “encourage States to expand opportunities” for these children. There is no requirement that they actually implement early intervention programs for children under 3. Also there is no specific definition of substantial developmental delay. Definitions may vary and may include or exclude hearing children of deaf parents living in an environment lacking spoken language stimuli.

IDEA, in its current state and interpretation, is not sufficient to meet the special educational needs of hearing children of deaf parents. Early intervention is required for these children. They must be exposed to spoken language as early as possible. The State has assumed a duty to educate its children, including those with disabilities. In order to fully educate the hearing children of deaf parents, the State must set up early intervention services that would allow for the education of these children and the prevention of any language and speech developmental delays or impairments.

B. THE STATE’S PARENS PATRIAE INTEREST

The doctrine of parens patriae, from the Latin “parent of his or her country,” is the doctrine under which the State, regarded as a sovereign, can act in its capacity as provider of protection to those unable to care for themselves. The doctrine is often cited as the “fundamental principle guiding our courts in promoting a child’s welfare and best interests.” The State has applied the doctrine of parens patriae in various instances where it felt that the child’s best interests would be protected only by the exercise of this State power.

In Hoefers, the Superior Court of New Jersey, applying the doctrine of parens patriae, required a father to pay for his children’s education at a

128. E.g. Hoefers 672 A.2d at 1308-1309 (holding that father must honor divorce settlement agreement and pay for child’s private education because it is in child’s best interest); State v. Perricone, 181 A.2d 751 (N.J. 1962) (where evidence presents compelling necessity to protect child’s welfare — here, blood transfusion to save child’s life — state’s exercise of parens patriae jurisdiction to allow blood transfusion over parental religious objection not violative of freedom of religion or due process).
private school despite his objections to the children’s enrollment in private school.\textsuperscript{129} The two brothers, B.J. and W.J., were children of divorced parents and resided with their mother.\textsuperscript{130} At the time of the divorce, the older child was enrolled at the private school and it was understood that the younger son would soon be enrolled there also.\textsuperscript{131} With full knowledge of the educational plans for the children, the father and mother entered into a divorce agreement which stated that the husband would be responsible for the tuition of the two children as long as “the children are doing well there and both parties agree they remain in private school.”\textsuperscript{132} The agreement further stipulated that both parents would discuss the continued enrollment of the children at the private school, and any major decisions involving either of the children.\textsuperscript{133} The father discontinued payments to the school without discussing it with the mother and notified the mother by a letter from his attorney that he would no longer support the private education of the children.\textsuperscript{134} The court held that the father breached the divorce agreement because he unilaterally decided to cease the children’s current education without discussing it with their mother as was required under the agreement.\textsuperscript{135} Despite finding that the section of the agreement requiring the father to pay for the private education was voided by the father’s acts,\textsuperscript{136} the court still held, under a doctrine of \textit{parens patriae}, that the court in equity could still require the father to financially support the children’s current private education.\textsuperscript{137}

The court in \textit{Hoefers}, felt that it “must firmly assert its role of \textit{parens patriae} and enter judgment in accord with such equitable principles as may be required to protect and promote ‘the best interests’ of the children within its jurisdiction.”\textsuperscript{138} Best interests, in this case, means, “the right of the children to be supported, nurtured, educated in accord with the collective available income of both parents.”\textsuperscript{139} \textit{Parens patriae}, in regard to children and their rights, is the “philosophical source” of State law and public policy governing their general welfare and best interests.\textsuperscript{140} By common law, it is the foundation upon which courts have built the tradition of enforcing parental responsibility.\textsuperscript{141} Education of one’s children has historically been

\textsuperscript{129} See generally Hoefers 672 A.2d. at 1315.
\textsuperscript{130} \textit{Id.} at 1302.
\textsuperscript{131} \textit{Id.}
\textsuperscript{132} \textit{Id.} at 1302-1303.
\textsuperscript{133} \textit{Id.} at 1303.
\textsuperscript{134} \textit{Id.} at 1304.
\textsuperscript{135} \textit{Id.} at 1306.
\textsuperscript{136} \textit{Id.} at 1307.
\textsuperscript{137} \textit{Id.} at 1315.
\textsuperscript{138} \textit{Id.} at 1306.
\textsuperscript{139} \textit{Id.}
\textsuperscript{140} \textit{Id.} at 1308.
\textsuperscript{141} \textit{Id.}
the responsibility of the parent. The father claimed that his freedom of religion rights were violated by having to pay for the children's education at a private religious school, the court found that the compelling State interest in ensuring the welfare of the children (here, by allowing the children to continue their private education) triumphs over a competing constitutional challenge of the parent. Likewise with hearing children of deaf parents, there may be occasion in which the parent does not choose the education that would actually be best for the child. If, for example, deaf parents choose to ignore the possibility that their hearing child may be developing a speech and language disability, the parents are not acting in the best interests of the child. Under the doctrine of parens patriae, the State is required to protect and promote the best interests of the child.

When the best interests of the child come in conflict with the wishes of the parent, the State may exercise its parens patriae power and compel the parent to act in the child's best interests. "Parents' rights are secondary to the best interests and the welfare of the children." In Ridenour, the court found that it was in the best interests of the child to allow visitation by paternal grandparents even though mother and father were divorced and the child currently lived with the mother. Although the court recognizes the right of parents to raise their children; that right is not free from State regulation and the best interests of the children are the paramount concern of the State.

In the case of hearing children of deaf parents, early intervention is in the best interest of the child, and therefore should be of paramount concern to the State. Early detection of any delayed language development provides time for hindered development to be corrected. Since it is in the best interest of the child to learn spoken English, so that he will be able to interact easily with the rest of the hearing community, the State must ensure that the child masters spoken English. In order to ensure proper language acquisition, the State must make sure that it is learned before the
passing of the critical period. Thus the State should, as part of the Individuals with Disabilities Act, set up an early intervention program that tests the linguistic ability of hearing children of deaf adults and requires language exposure for those who lack it.

Even in cases in which parents object to State intervention because it would impose on their right to freedom of religion, the court has found that the welfare of the child takes priority over the rights of the parent. In the Hoener case, the parents were Jehovah’s Witnesses and felt that it would be a violation of church law to give the child a blood transfusion. However, despite the deep respect the court holds for freedom of religion, that constitutional freedom “must bend to the paramount interest of the State to act in order to protect the welfare of a child and its right to survive.” Although freedom of religion allows the parent to follow his/her religious beliefs, the parent is not allowed to impose those beliefs on the child when such imposition would expose the child to a considerable risk of harm. Deaf parents may contest the implementation of State programs that require their children to attend speech and language classes at an early age. One protest to such a program is that Deafness is a culture and as such, the parents have a right to raise their children within their own culture. Yet, if the best interests of the child are ignored because of the parent’s cultural beliefs, the State may come in under its parens patriae power and require the parents to act in accord with the best interests of the child.

Courts in varying jurisdictions have concurred that the best interests of the child are the paramount concern of the State. Because the State’s parens patriae power allows it to act in the best interest of the child, the State would be authorized to implement a program such as that outlined above which would require early and periodic testing of the verbal language skills of hearing children of deaf parents. Early State intervention is the only way to ensure that the hearing children of deaf adults receive a proper and full education. In Hoefers, the court held that, although the father felt his freedom of religion rights were being violated, the best interests of the child required him to continue paying for his children’s private education. In the case of deaf parents with hearing children, the

153. Taylor supra note 5, at 251.
155. Id. at 142.
156. Id. at 143.
158. Author Note: Deaf is capitalized when referring to the culture rather than the physical condition.
159. See e.g. Hoener 171 A.2d. 140 (holding that parents’ constitutionally protected religious beliefs must yield when in conflict with the best interests of the child).
160. Hoefers v. Jones, 672 A.2d. 1299, 1308; Hoener 171 A.2d at 143; Ridenour 901 P.2d at 773.
162. Hoefers, 672 A.2d. at 1315.
right of the parents to keep their children ignorant of spoken language has no constitutional foundation. Hence it would not be accorded the same respect as firmly held religious beliefs and would accordingly be found insufficient to outweigh the needs and best interests of the child. The doctrine of parens patriae gives the State the authority to compel parents to send their children to language intensive sessions if it is found that the child is not receiving adequate spoken language input. As discussed above, if a child does not receive adequate language input, a child will not learn spoken language. Consequently, if a hearing child does not master spoken language, that child faces an insurmountable obstacle to a happy and productive life. Thus it is in the best interest of the child to ensure that the hearing child learns spoken English.

B. THE HIGH VALUE GIVEN EDUCATION BY THE STATE

Of paramount importance to the State is the education of its children. As stated by Chief Justice Warren in Brown I:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.\(^{164}\)

If it is found that the child’s educational needs are being neglected, the State will remove the child from the parent’s custody,\(^{165}\) despite the Court’s overwhelming desire to keep children in the custody of their parents.\(^{166}\) In *In re B.A.B.*, the Court of Appeals of Minnesota held that the child was in need of protection or services because of educational neglect.\(^{167}\) In this case, the child had missed twenty full days of school between September 3, 1996 and April 2, 1997, had been tardy nine days and missed an additional

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163. STEINBERG, supra note 1, at 17.
166. See Santosky, 455 U.S. at 747-748 (clear and convincing evidence of neglect is required before state may permanently remove child from parent’s custody).
morning session.\textsuperscript{168} The court, in finding that the child was in need of protective services, stated that a child is in need of protection or services when the child is without necessary food, clothing, shelter, or education.\textsuperscript{169} Nothing in the opinion suggests that any needs, other than the child's educational needs, were being neglected by the child's mother.\textsuperscript{170} From this opinion, it is clear that education, in the eyes of the State, is just as important to a child's welfare as food, shelter, and clothing. Children whose education is severely neglected by their parents will be removed from their custody to ensure that the children receive the necessary and proper education to which they are entitled.\textsuperscript{171}

Education is of extreme importance to the State, as can be seen in \textit{State of W. Va. v. Riddle}.\textsuperscript{172} \textit{Riddle} is a West Virginia case in which the parents appealed criminal convictions for failure to obey the compulsory school attendance law.\textsuperscript{173} The Riddles were "Biblical Christians"\textsuperscript{5} and had two children enrolled in private school for a while; however, the parents did not agree with all of the religious teachings of the school and pulled the children out, deciding rather to home-school them.\textsuperscript{174} West Virginia law allows for the home-schooling of children; however statute requires that the instruction be approved by the county board of education and that the educator be qualified by the county superintendent and county board of education to give instruction in subjects required in the free elementary schools of the State.\textsuperscript{175} Esther Riddle, the children's mother, decided to teach the children herself, but neither requested nor received approval from the county board of education.\textsuperscript{176} Despite the opinion of the court that Esther Riddle's teaching was probably superior to that which the children would have received in public school,\textsuperscript{177} the court upheld their convictions for failure to comply with compulsory school attendance laws.\textsuperscript{178} In so holding, the court stated that reversing their convictions would endanger the educational welfare that the State has so far ensured for its children.\textsuperscript{179} A reversal would have implied that parents did not have to receive approval from the county board of education prior to home-schooling their children.\textsuperscript{180} One may infer from this idea that the court was fearful that children would not be ensured a proper education if parents were free to

\begin{enumerate}
\item Id. at 777.
\item Id. at 778.
\item See generally id.
\item See id. (listing education, food, shelter, clothing together as necessary for a child).
\item Id. at 360.
\item Id. at 361.
\item Id. at 363.
\item Id.
\item Id. at 361.
\item Id. at 367.
\item See id. at 366.
\item Id.
\end{enumerate}
educate their children in any way they saw fit. Some regulation is necessary in order to assure that children learn how to read, write, do arithmetic, and gain some knowledge of how government works. If parents were allowed to home school their children without any supervision from the board of education, there would be no guarantee that the children would receive the full benefits that a compulsory state education gives them.

Exceptions to the compulsory school attendance laws have been made. In Yoder, the Court made a tailored exception to the compulsory attendance laws for the Amish. The Amish parents sent their children to public school through grade eight; however after completion of grade eight, the parents removed their children from public school and continued their education in a vocational setting within the Amish community. The Amish parents objected to formal education beyond the eighth grade for religious reasons because they felt that the values promoted in high school were contrary to the Amish way of life and religious beliefs. In reversing the convictions for failure to comply with state compulsory school attendance laws, the Court carved out a narrow exception to the law for the Amish because the religious beliefs they held are rooted in centuries of history and their religious objections to formal education beyond the eighth grade were firmly grounded in central Amish religious concepts. The Court also felt that formal education beyond the eighth grade was not necessary for the welfare of the Amish children. The Amish community is one of simple values and a simpler way of life. Those born within the community are likely to live their entire lives within the community and an additional one or two years of formal education, as was required under the State’s compulsory school attendance laws, will not prepare or help the children in preparing for an Amish way of life. The Court also determined that a few additional years of formal education would not serve to enhance the Amish’s ability to live in society outside of the Amish community. Yoder creates a very narrowly drawn rule. It does not

181. Id. at 364.
182. Id.
184. Id. at 235-236.
185. Id. at 207, 211.
186. Id. at 217.
187. Id. at 210.
188. Id. at 210-11.
189. Id. at 222.
190. Id. at 210.
191. Id. at 211.
192. Id. at 224-25.
193. Id. at 234-35.
imply that the free exercise of religion clause is an absolute bar to any intrusion whatsoever by the State.\textsuperscript{194}

Objections to State intervention requiring the linguistic testing and education of hearing children of deaf parents would have to rest on cultural grounds. The Deaf community is a very proud community, linked not only by their common physical characteristic, but also by a common language, American Sign Language, or ASL.\textsuperscript{195} Hearing children born to deaf parents are often considered to be both bilingual, communicating in both ASL and English, as well as bicultural.\textsuperscript{196} This is a wonderful way to view hearing children of deaf parents. However problems arise when the deaf parents expose the child to only one of those cultures. There have been cases in which deaf parents have chosen to raise their children solely in the Deaf world until they are of school age. It is these parents who would largely object to the intervention by the State requiring the children to be linguistically tested and educated. The children of these parents are those that need and should be granted under the State’s \textit{parens patriae} authority early testing and education. There is no evidence to suggest that a child cannot learn ASL and spoken English concurrently.\textsuperscript{197} Thus, despite any early intervention by the State, deaf parents would be able to teach their children ASL and raise them as a member of the Deaf World.

Others may object to the proposed program claiming it interferes with a right to privacy. While the State recognizes the importance of the parental right to make childrearing decisions, State intervention is appropriate when it will ensure that the best interests of the child are met.\textsuperscript{198} A court cannot blindly adhere to the right of privacy when this would be detrimental to a child’s best interests.\textsuperscript{199} The situation of hearing children of deaf parents is one in which the best interests of the child can be met by ensuring that the child learns spoken English to the best of the ability. A lack of early State intervention creates a risk that some children may be irreparably harmed. If the critical period for language learning passes before the child has an opportunity to learn spoken English, the child will never master their spoken English language with native proficiency.\textsuperscript{200}

IV. CONCLUSION

State intervention is necessary in order to protect the best interests of hearing children of deaf parents. While it may be uncommon for deaf

\begin{itemize}
\item \textsuperscript{194} See \textit{e.g.}, W. Va. v. Riddle, 285 S.E.2d 359, 365 (1981).
\item \textsuperscript{195} Singleton, \textit{supra} note 12, at 222.
\item \textsuperscript{196} \textit{Id.} at 225.
\item \textsuperscript{197} Bonvillian, \textit{supra} note 2, at 225.
\item \textsuperscript{198} Von Eiff v. Azieri, 699 So.2d 772, 774 (1997) (maternal grandparents were granted visitation rights after the child’s mother died).
\item \textsuperscript{199} \textit{In re} D.A. McW., 429 So.2d 699 (1983) (grandparent visitation approved where abrupt termination would be detrimental to child’s welfare).
\item \textsuperscript{200} TAYLOR, \textit{supra} note 5, at 251.
\end{itemize}
parents to need help teaching their children spoken English, those parents who do, should have that help. This education should and must be provided by the State. Not only does the State regard education as one of the most important values in our society, but the State also has the sovereign duty to provide an education to all of its residents. The need for hearing children of deaf parents to be exposed to spoken language at an early age, is an educational one, therefore it is a concern of the State. The State must not only provide the necessary education for these children, but it must also see that they are educated in accord with the children’s best interests. Therefore, it is the conclusion of this author that the State is not only authorized, under the doctrine of parens patriae, but is also required, by its duty to protect the best interests of the child, to implement an early intervention linguistic program for hearing children of deaf parents.