

## Educational Advocacy: A Short Course on a LONG Process!

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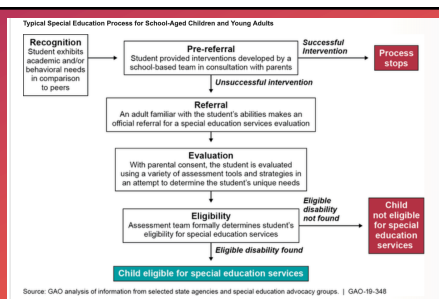
<https://www.facebook.com/LipsonAdvocacy/>

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### Child find obligations

- Child Find is the obligation of every SEA and LEA to identify, locate and evaluate all children between the ages of birth and 21 who may need special education and related services. This includes children with disabilities attending private schools.
- Anyone - a parent, teacher, student, nurse, doctor, social worker - may request that a child be considered for special education.

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### Evaluations

- Children suspected of having disabilities must be tested prior to receiving special education. This testing is called an evaluation. A **full evaluation** must be completed and an Individualized Education Program (IEP) developed before a student is placed in a special education program.
- Evaluations are what are used by the LEA to determine whether the student is **eligible** for special education services
- Initial evaluations are conducted by staff employed by the LEA including school psychologists, occupational therapist, speech therapist, physical therapist, behavior specialist

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### Evaluations

- A child may be referred by the **parent or school staff** for an evaluation to determine whether the child qualifies for special education services
- The tests **must not discriminate** by race or culture and must be given in the child's **primary language** unless it is clearly impossible to do so.
- Parental **consent** must be provided for an initial evaluation
- The LEA must complete the initial evaluation within **60 days of receiving** parental consent

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### New Report Released by United States Government Accountability Office April 2019

- Nearly 7 million children between the ages of 3 and 21 received special education services during the 2015-16 school year under the Individuals with Disabilities Education Act. That's about 13% of the total number of students enrolled in public school. But the percent of the population served under the act varies across states. **We found that differences in states' eligibility criteria may contribute to this variation.**
- Challenges with identifying and evaluating children can also affect enrollment rates—for example, when children don't speak English, school districts don't always have staff that can evaluate them in their first language.

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### BLACK STUDENTS IN SPECIAL EDUCATION: DIFFERING VIEWS

Paul L. Morgan and George Farkas find in their research that minority children are less likely, not more likely, to be identified for special education services. Drawing on longitudinal student data, they computed the odds that a black student would be identified using two different methods.

Both their estimates are significantly different from that of the federal Office of Special Education Programs. Based on national data collected in fall 2013, OSEP found black students were often more likely to be identified for disabilities that year compared with all other racial and ethnic groups combined.

	Morgan and Farkas Study		OSEP Data
Disabilities	Black students compared to white students, adjusted for variations at different grades	Black students compared to white students, controlling for factors such as behavior and academic performance	Black students compared to all other racial/ethnic groups combined
Learning disabilities	34% less likely to be identified	58% less likely to be identified	51% more likely to be identified
Speech and language impairments	17% less likely	63% less likely	approximately equal
Intellectual disabilities	49% more likely	57% less likely	more than twice as likely
Health impairments	29% less likely	77% less likely	37% more likely
Emotional disturbances	17% more likely	64% less likely	more than twice as likely

SOURCE: Paul L. Morgan and George Farkas, Office of Special Education Programs, U.S. Department of Education

EDUCATION WEEK

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### Initial Evaluations

- Notice of evaluation **must** be provided to the parent
- The evaluation must use a **variety** of evaluation tools and strategies to gather relevant academic, functional and developmental information about the child
- Parents should have input in the evaluation process.
- Information gathered from the evaluation is used to determine whether the child is a child with a disability and to help determine IEP content
- The evaluators must prepare a written report with the results of the evaluation.



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### Re-Evaluations

- If the student has already been found to be eligible for special education services (i.e., the student has an IEP), then the LEA must conduct a **re-evaluation of the student at least once every 3 years**
- Parent and LEA can **agree** that a re-evaluation is **not** necessary
- LEA must obtain **parental consent** for the re-evaluation

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### Tips for Advocacy:

- Suggest the parent make the request for an initial evaluation in writing
- Explain the parent must sign a consent for an evaluation before the timeline starts ticking
- Clarify if the parent has provided information to the school from evaluations obtained outside the school (parent's choice)
- Parents can draft a letter to the school, requesting an initial evaluation and there are many templates online
  - Parents should include any information or request for records that discusses the student's disability, need for special education services in school, and impact the disability has on the student's education




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The team (which includes parents) can make any evaluation process more meaningful by giving a list of questions to the evaluators. Answers to focused questions, *such as these*, can help the IEP team in planning for the student's education. Some example questions:

1. How can my student become more independent with toileting?
2. Would my student benefit from more community integration experiences?
3. What vocational training would be appropriate for my student?
4. How can my student learn to communicate choices and preferences?
5. What is triggering my student's angry outbursts, and what can be done to help my student develop more self-control?
6. What supports are needed for my student to participate in a inclusive class setting?

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### Eligibility Process

- Once an evaluation has been completed, the next step is to determine **whether the student is eligible for special education services**
- The standard used to determine whether a student is eligible for special education services is
  1. The student **has** a disability
  2. The disability **impacts** the student's educational performance; and
  3. The student **needs** special education and related services **due** to the adverse impact the disability has on the student's educational performance

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### Eligibility Meeting

- **Eligibility meeting** occurs for both an initial evaluation (to determine whether the student qualifies for special education services) and a re-evaluation (to determine whether the student continues to qualify for special education services)
- School psychologist who conducted the evaluation will be present at the meeting to discuss the results of the written evaluation.

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### LET'S PLAY TRIVIA!

Go to <https://kahoot.it/> and wait for me to announce the pin! (password)

Please enter a screen name that indicates either your sense of humor about advocacy or your ability to trash talk.

Points are awarded based upon both your accuracy and timeliness!

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### Section 504 of the Vocational Rehabilitation Act

Section 504 of the Vocational Rehabilitation Act is a civil rights law enacted in 1973.

It was created to prevent discrimination against all individuals with disabilities in programs that receive federal funds.

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### Section 504 of the Vocational Rehabilitation Act

Individuals with disabilities cannot be excluded from participation in, denied benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance.



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### Definition of Disability: Section 504 (and the ADA)

A person is considered to have a disability if that individual:

- has a **physical or mental impairment** that substantially limits one or more of the person's major life activities
- has a **record** of such an impairment
- is **regarded** as having such an impairment

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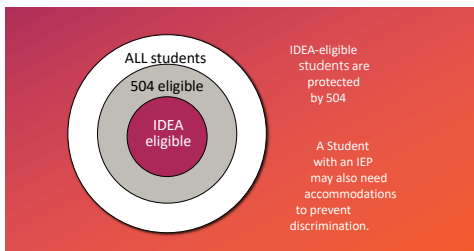
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### Relationship of Federal Laws



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### Section 504 of the Vocational Rehabilitation Act

- Prohibits discrimination against students with disabilities in federally funded programs.
- The 504 Plan is a method that SEA/LEAs use to implement the legal protections mandated by 504.
- Section 504 ensures students of equal opportunity to all school activities.

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### Section 504 of the Rehabilitation Act

- Under 504, an "appropriate" education means an education comparable to that provided to students without disabilities.
- This may be defined as regular or special education services.
- Students can receive related services under Section 504 even if they are not provided any special education.
- 504 Plans should be written, are typically preceded by evaluations or documentation from medical professionals and should be detailed and practical

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### Practice Tips

Eligibility is not supposed to dictate the types of services the student receives or the placement, but in practice schools use the student's eligibility category to narrow down the type of services the student will receive

People say a lot.  
So, I watch what they do.

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## Practice Tips

- An **eligibility report** is created during the meeting
- If the determination is made that a student has a disability and the disability adversely affects the student's educational performance and the student needs special education and related services, an **IEP must be developed**

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## Practice Tips

- If the parent does not agree with the results of the school's evaluation, the parent has the right to request an independent educational evaluation (IEE)
- Each LEA has policies and procedures in place outlining how a parent may request an IEE
- If the LEA agrees to the IEE, they fund the IEE
- If the LEA does not agree to the IEE, they **must** file a due process complaint against the parents defending the appropriateness of the school evaluation that was conducted

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## IEP: Individualized Education Program

Legally mandated plan outlining the student's disability, eligibility for special education services, present levels of performance, annual goals, supports and accommodations, services, and placement

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### The IEP Timeline

- After initial determination that a student is eligible for services, an IEP meeting must take place within 30 days
- The IEP must be designed to provide a *free appropriate public education* (FAPE) in the *least restrictive environment* (LRE) to the student

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### An Advocate's Definition of FAPE (IDEA):

- FAPE is everything that we push forward for a meaningful day at school.
- FAPE is the substantive education that students with disabilities are entitled to receive.
- LEA (Local Education Agencies) must provide FAPE. Students and parents do not provide FAPE.

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### FAPE In IDEA- Under the IDEA, FAPE is a statutory term.

**It is defined to include special education and related services that**

1. are provided at public expense, under public supervision and direction, and without charge;
2. meet the standards of the State educational agency (SEA), including IDEA Part B requirements;
3. include an appropriate preschool, elementary school, or secondary school education in the State involved; and
4. are provided in conformity with an IEP that meets the requirements of 34 CFR §§300.320 through 300.324.

Further, each child with a disability is entitled to receive FAPE in the least restrictive environment (LRE).

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### FAPE from Caselaw (pre-Endrew)

Previously, case law, particularly Bd. Of Education v. Rowley, 458 U.S. 176 (1982) has defined FAPE

- FAPE is not the "best" program
- FAPE does not have to "maximize child's potential"
- Court emphasized that an IEP had to be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.

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### Endrew Says Special Education Must Be:

**"Reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances"**

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### Endrew F. v. Douglas County School District

- Endrew (Drew), a student with autism, was enrolled in Douglas County School District from preschool – 4th grade, where each year he had an IEP
- In 5th grade, Drew's parents disagreed with school officials about IEP proposed for that year. His parents subsequently enrolled Drew in private school.
- Drew's parents filed a complaint with the state's department of education, claiming he had been denied FAPE and seeking reimbursement for private school tuition.
- Hearing officer ruled for district, finding that Drew had made "some academic progress" while in public school.



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### Endrew F. v. Douglas County School District

- Drew and his parents filed lawsuit in federal district court; court agreed with the district
- U.S. Court of Appeals for the 10th Circuit upheld that ruling
  - 10th Circuit held that the school district needed to try to provide Drew with educational benefit that was "merely more than de minimis"
  - Under that test, Drew's IEP was "substantially adequate"
- Drew and his parents asked U.S. Supreme Court to take the case



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### Endrew F. v. Douglas County School District

#### Question presented to the Supreme Court:

What is level of educational benefit that school districts must confer on children with disabilities to provide them with FAPE as guaranteed by the IDEA?



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### Endrew F. v. Douglas County School District

Drew and his parents argued:

- IDEA does not require schools to "maximize the potential of children with disabilities," but it is not enough for schools to provide a "merely more than de minimis" benefit.
- Schools need to provide children with disabilities with essentially the same opportunities available to students generally.
- Under IDEA, Congress intended to provide students with disabilities with not just access to education, but with enough substantive educational benefit to make such access meaningful.



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## Andrew F. v. Douglas County School District



### District argued:

- In Rowley, Supreme Court indicated that IDEA does not "prescribe the level of education to be accorded handicapped children."
- A child with a disability receives an "appropriate education" as long as that education is "personalized" and "sufficient to confer some educational benefit."
- Other provisions of IDEA "ensure children will and do receive a high-quality education"—no need to impose a more specific standard.
- District argued that a more specific standard would have undesirable consequences, such as requiring courts to become more involved in education policy disputes and, a more specific standard would change the "rules" of the game so that states couldn't anticipate the standard.

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## From the headlines:

### Unanimous Supreme Court Expands Scope of Special Education Rights

By Mark Walsh on March 28, 2017 10:52 AM

Graphic by Kate

Supreme Court sets higher bar for education of students with disabilities

US high court hands disabled students win on education standards

Illustration: 2017-03-28 13:45:07

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## Andrew F. v. Douglas County School District

### Holding of Supreme Court:

- To meet its substantive obligation under IDEA, a district must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.
- Case was remanded to 10th Circuit for analysis of Drew's complaint under newly-articulated standard.



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### Endrew F. v. Douglas County School District

#### Court's reasoning:

- The essential function of IEP is to set out plan for pursuing academic and functional advancement; it must aim to enable the child to make progress.
- The "reasonably calculated" standard from Rowley is more demanding than 10th Circuit's standard, and it also recognizes the prospective expertise and judgment required of school officials to craft IEP specific to unique needs of child.



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### Endrew F. v. Douglas County School District

Assessing whether a district has met "reasonably calculated to enable child to make progress appropriate in light of child's circumstances" standard:

- The opinion outlines "a general standard, not a formula"
- Normally, an educational program is designed with goal of child progressing from grade to grade; if not possible, then program should be "appropriately ambitious" in light of child's circumstances
- Districts should be able to offer "cogent and responsive explanation" for decisions made regarding student's IEP



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### What Does It Mean?

- A "Markedly More Demanding" Standard
- "Appropriately Ambitious" Education
- "Challenging Objectives"

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### What Does It Mean?

- It is clear the "**de minimus**" standard is put to rest: "When all is said and done, a student offered an educational program providing 'merely more than de minimis' progress from year to year can hardly be said to have been offered an education at all."
- And while the Court declined to second guess decisions made by the educators, it is clear that a school district must "be able to offer a **cogent and responsive explanation** for their decisions" that meets the standard enunciated in this case.

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### Endrew Applied

For students being educated in "regular" classrooms with non-disabled peers:

Special education must be reasonably calculated to:

- Allow the child to meet generally applicable academic standards
- Advance from grade to grade

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### Endrew Applied

For the very small group of students who, due to significant cognitive disabilities, cannot meet generally applicable standards:

Special education must be reasonably calculated to:

- Enable the child to make progress
- Progress may be measured against "alternate academic achievement standards" which are aligned with generally applicable grade-level content standards
- Education must designed to promote further education, work and independence
- Every child should have the chance to meet "challenging objectives" and "ambitious" goals

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### What Progress?

Progress commensurate with the child's "potential for growth"

US ED, Endrew Q&A, 12/7/17



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### What Schools Must Provide...

"A Cogent and Responsive Explanation"

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### What IS Cogent?

Definition of cogent

1a : appealing forcibly to the mind or reason : convincing cogent evidence

b : pertinent, relevant a cogent analysis

2: having power

to convince or convict cogent forces

— cogently

adverb

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Let's work on COGENT explanations in small group.....



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What are sources of Data / Information / Evidence you might request?

What are sources of  
Data / Information / Evidence  
you would have a parent to request?

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Charting progress using 3 yrs of IEP data & progress reports:

Take the OLDEST IEP, and make a list of all of the goals and objectives. Next to each one, write the BASELINE that was reported in the IEP (if there is no baseline reported in the IEP, that's a problem. You NEED to ensure that your annual IEPs have clear baselines written into the IEPs from here on out).

Now, take each progress report for that next year, and write the reported progress toward mastery. (If your progress reports only say "progressing as expected" with no percentages or no numbers, that is a problem. You need to ensure, from here on out, that progress is reported in terms of number. If your progress reports say "making minimal progress" or something along those lines, that's a HUGE problem – an IEP meeting should be called anytime you see that, because SOMETHING better be changed in your child's programming so they CAN make progress).

Credit Allison Vrolijk, JD

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### Charting progress using 3 yrs of IEP data & progress reports:

Now take the next annual IEP, compare the goals and objectives to last year's. If they are exactly the same, (meaning language of the objectives AND baselines), that is a HUGE red flag that your child made zero progress in that area that year. If the objectives are the same but the baselines are higher, then YOU need to assess whether you feel like that is a reasonable amount of progress to expect "in light of your child's circumstances."

Repeat the above steps for the next year's progress reports, the most current IEP, and the most current year's progress reports.

Credit Allison Vrolijk, JD

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For comparison, following is a chart comparing John's schedule in the segregated setting with the schedule of his typical peers in kindergarten. These schedules were posted outside each classroom door. These schedules do not include individual services students may receive in either setting such as ESOL, OT, S/L, etc.

It is interesting to note that John, as a student with autism, must negotiate more transitions in the segregated classroom than he would in the general setting. John reads 6 grade levels above his peers but has no language arts instruction. John wants to learn how the world works, but he receives no instruction in science or social studies. While his classmates nap from 12:30 – 1:30, John sits in his classroom listening to music with headphones. After his classmates leave school early for their special education buses, John remains in the classroom without any peers for 50 minutes. The allegations of abuse notwithstanding, the segregated setting denies John the education to prepare him to lead a productive and independent life to the maximum extent possible (20 U.S.C. § 1400(c)(5)).

† = John attends Ms. Jones's class at this time.

Time	Segregated Classroom/ Ms. Smith	Time	General Classroom/ Ms. Jones
8:15 – 8:30	Morning Routines		
8:30 – 8:45	Prayer/Special Skills	8:30 – 8:45	Language Arts/Class Time
8:45 – 9:00	Language Routines		
9:00 – 9:15	Morning Routines		
9:15 – 9:30	Snack	9:30 – 9:45	Science 1
9:30 – 9:45	Prayer/Snack	9:45 – 10:00	Mathematics
10:00 – 10:15	Reading	10:00 – 10:15	Math 2
10:15 – 10:30	IEP Bus		
10:30 – 10:45	Independent movement		
10:45 – 11:00	Interactive read aloud	11:00 – 11:15	Science/Social Studies
11:00 – 11:15	Intensive read aloud	11:15 – 11:30	Class
11:15 – 11:30	Movement routines	11:30 – 11:45	Language Arts
11:30 – 11:45	Language/Social Skills	11:45 – 12:00	Language Arts
11:45 – 12:00	Computer	12:00 – 12:15	Movement
12:00 – 12:15	Read Quiet Time	12:15 – 12:30	Language Arts
12:15 – 12:30	Prayer up for dismissal	12:30 – 12:45	Language Arts
12:30 – 1:30	IEP Bus/Class Time		

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### LET'S PLAY TRIVIA!

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Please enter a screen name that is indicates either your sense of humor about advocacy or your ability to trash talk.

Points are awarded based upon both your accuracy and timeliness!

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### Basic components of an IEP:

- The student's disability
- Impact of the student's disability on educational performance
- Parental concerns
- Present levels of performance
- Measurable goals
- Related services
- Impact of behavior (need for Functional Behavior Assessment and Behavior Intervention Plan)
- Supports and accommodations
- State testing accommodations
- Location of services and placement

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### Related Services:

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| <ul style="list-style-type: none"> <li>• Audiology/Interpreter Services</li> <li>• Braille</li> <li>• Counseling Services</li> <li>• Early Identification &amp; Assessment of Disabilities</li> <li>• Medical Services (To determine eligibility)</li> <li>• School Health Services (for health-related needs)</li> <li>• Occupational Therapy</li> <li>• Orientation &amp; Mobility Services</li> <li>• Parent Counseling &amp; Training</li> </ul> | <ul style="list-style-type: none"> <li>• Physical Therapy</li> <li>• Psychological Services</li> <li>• Recreation</li> <li>• Rehabilitation Counseling Services</li> <li>• Social Work Services in School</li> <li>• Speech/Language Pathology Services</li> <li>• Transportation</li> <li>• Interpreter Services</li> <li>• Transition Specialist</li> <li>• Vocational Trainer/Counselor</li> </ul> |
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& others as needed. "This is not an exhaustive list."  
— US Dept. of Education  
IDEA and IDEA regulations

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### When developing present levels of performance (PLOP)

LEAs can use current baseline data such as:

- curriculum based assessments
- student work samples
- teacher observations
- parent input
- other relevant data to describe **academic and functional** performance

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### Advocacy Possibilities:

- Often, if the student already has an IEP, the PLOP is not updated to reflect the current status of where the student is performing academically, functionally, and behaviorally
- We can suggest that families ask the school for **progress monitoring data**
  - Each school administers some type of standardized testing periodically to the students to determine where they are performing
  - Families can ask the school if the student was administered any standardized testing and the results of the testing
  - Based on this information, families can focus on whether the student has progressed or regressed

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### Measurable annual goals:

- Goals should focus on the student's area of need
- Should be measurable, usually by data collected periodically by the school to determine whether the student is **progressing** in meeting the goal
- Progress reports should be provided to the parent and in advance of the meeting

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College and Career Ready (CCR) Reporting Outcomes for Students 3 through 11

### Measurable Annual IEP Goals

**Self-Check**

- ☐ Does the goal reflect ambitious and achievable annual progress?
  - Does the goal reflect high expectations, challenge the student, and accelerate progress toward meeting grade-level standards?
  - Does the expected level of attainment reflect the goal of closing the gap between the baseline and grade-level achievement/competencies, in the case of students with the most significant cognitive disabilities, alternate academic achievement standards aligned with grade-level standards (gap may not be closed in one year)?
  - Is the goal able to be met within one year?
- ☐ Will I know when the student has achieved the goal?
  - Is there a clear baseline (i.e., measurable starting point)?
  - Is the level of attainment clear and aligned with the baseline?
- ☐ Does the method of progress monitoring allow for measuring the goal as written?
  - Does the method of measuring progress allow for comparison with the baseline and level of attainment?
- ☐ Will I be able to report progress as per schedule in IEP?
  - When progress is reported, can I explain how the student did or did not make progress?
- ☐ When the parent reads the goal will he or she be able to understand ...
  - This area or skill being worked on?
  - Where was the student at the start of this IEP? (i.e., baseline)
  - What must be done (progress) the student is expected to make this year?
  - How and when they will get information about progress?

\* The term "Most Significant Cognitive Disability" is not the same as "Disability's Impact Area for Educational Outcomes." A student with a "Most Significant Cognitive Disability" is a federal term denoting a student with a significant cognitive impairment that is expected to significantly impact the student's achievement.

**ILLINOIS DEPARTMENT OF EDUCATION**

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### Placement: Key Concepts of LRE

- Must be individually determined and based on a student's individual needs
- Applies to all children with disabilities (LRE is in both 504/IDEA)
- The general education class is always the first choice for placement
- Consideration and use of supplementary aids and services to make the general education class a first and viable option is required

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### Supplementary Aids and Services

Aids, services, and other supports that are provided in general education classes or other education-related settings to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate in accordance with 300.500-300.556.

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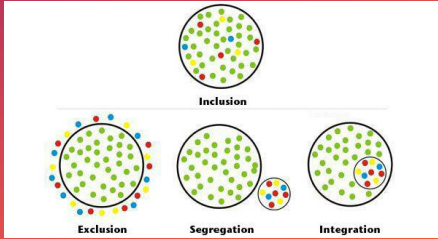
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### What is Inclusion?



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### Video: Inclusion Project Damian <http://bit.ly/2DE6Upd>

- As you watch video, think about the services provided to Damian in the classroom and what his IEP would look like.
- Jot down the services provided in his IEP
- Go through the services listed and pick one or two services that you believe are the MOST important.

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### What is "legal" inclusion?



**Full inclusion** = placement of a special education student in a regular class **80% or more of the day**

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### Inclusion as a Civil Right



Research on effects of segregation and isolation

- Make people feel angry, resentful, frustrated, hurt, different, inferior, worthless, unwanted, unaccepted, and ashamed
- Excluded students are relegated to a devalued social status and taught dependence, compliance, and subordination

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### Inclusion as a Civil Right



Students should not have to earn their way into a general education classroom. It is a civil right.

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### Inclusion as a Civil Right



Inclusion in school is key to preparing youth with disabilities for independent living, employment, building relationships with peers who are non-disabled, and learning to make decisions and self-advocate.

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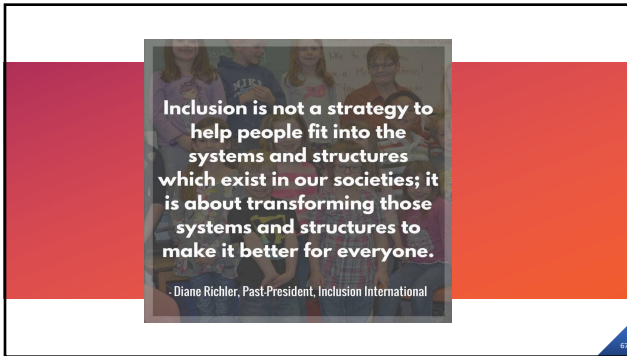
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**Inclusion is not a strategy to help people fit into the systems and structures which exist in our societies; it is about transforming those systems and structures to make it better for everyone.**

- Diane Richler, Past President, Inclusion International

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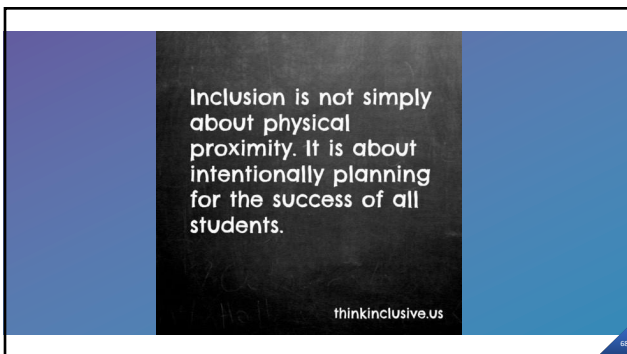
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**Inclusion is not simply about physical proximity. It is about intentionally planning for the success of all students.**

thinkinclusive.us

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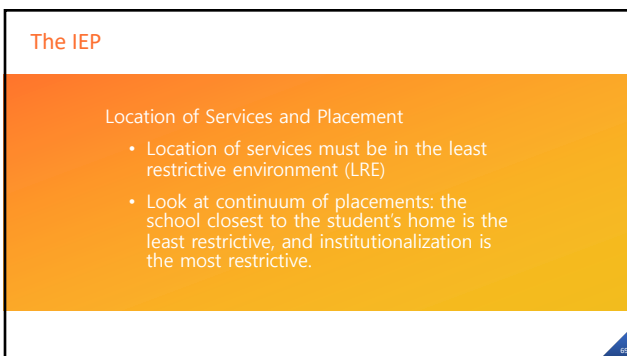
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**The IEP**

**Location of Services and Placement**

- Location of services must be in the least restrictive environment (LRE)
- Look at continuum of placements: the school closest to the student's home is the least restrictive, and institutionalization is the most restrictive.

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### LET'S PLAY TRIVIA!

Go to <https://kahoot.it/> and wait for me to announce the pin! (password)

Please enter a screen name that indicates either your sense of humor about advocacy or your ability to trash talk.

Points are awarded based upon both your accuracy and timeliness!

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### Parental Involvement

- Parents **must be notified** every step of the way during the special education process: evaluation, eligibility, to development of the IEP
- Parent must agree (consent) to the implementation of the IEP

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### Parental Involvement

- Parents **must be notified** every step of the way during the special education process: evaluation, eligibility, to development of the IEP
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