

NAVIGATING THE INS AND OUTS OF SPECIAL EDUCATION LAW

Presented by:

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What We Will Cover

- ❖ *Overview of Disability Laws*
- ❖ *The Special Education “Process”*
- ❖ *Effective Advocacy: Special Education Attorney Tips*



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BASIC FACTS

There are 852 school districts in the State of Illinois.

According to the U.S. Dept. of Education Census data published in 2017 (data from 2014 and 2015):

- 1. There are *1,831,161* total students enrolled in Illinois public schools for all grade levels from 1st through 12th grades**
- 2. Of those students, *258,906* (*14.1%*) are deemed as children with disabilities (as defined by the IDEA)**
- 3. Nationally, *13.3%* of the total student population are children with disabilities**



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BASIC FACTS

Of the 13 disabilities categories for special education students, Illinois students are found eligible most often in the following categories:

Ages 3-5

Autism – 5.7%

Developmental Delay – 46.4%

Emotional Disturbance – 0.20 %

Intellectual Disability – 0.4%

Other Health Impairment – 0.5%

Specific Learning Disability - 0.2%

Speech Lang. Impairment – 42.5%

Ages 6-21

Autism – 8.8%

N/A

ED – 8.0%

ID – 7.0%

OHI – 14.1%

SLD – 43.0%

SL Impairment – 15.5%

*Data from U.S. Department of Education
Part B Census, published 2017*



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WHAT ARE THE LAWS RELATING TO PARTICULAR DISABILITIES?

1. Section 504 of the Rehabilitation Act of 1973 (“Section 504”)
2. Title II of the Americans with Disabilities Act (“ADA”)
3. Individuals with Disabilities Education Improvement Act (“IDEA”)



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SECTION 504

A federal law designed to protect the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education, i.e., public school districts, institutions of higher learning, and other state and local education agencies.



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SECTION 504 PLANS - IEPs

- ❖ Section 504 is a broad federal civil rights law, an anti-discrimination law, that protects *all individuals* with a disability
- ❖ Section 504 casts a much wider net in terms of identifying eligible students in an effort to expand protection
- ❖ Generally speaking, under Section 504, there is not the same tension between child find obligations and avoiding over-identification as experienced with the IDEA
- ❖ The IDEA only applies to students (ages 3 through 21) who require special education because they have one of the specified types of disabilities (*i.e.*, qualify under 1 of the 13 eligibility categories)



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SECTION 504 PLANS - IEPs

PLANS: Section 504 Plans are much less formal than IEPs

SERVICES: Generally, direct services are not provided under Section 504, just modifications/accommodations (related services can be provided)



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SECTION 504 PLANS – Basic Requirements

1. Nature of the student's disability and the major life activity it substantially limits
2. The basis for determining the disability
3. The educational impact of the disability
4. The necessary accommodations
5. Placement in the LRE



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“Mental or Physical Impairment”

Means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities



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“SUBSTANTIALLY LIMITS”

*** Neither Section 504 nor its implementing regulations has defined the term “substantially limits.” The U.S. Department of Education’s Office of Civil Rights has declined, on numerous occasions, to provide specific guidance regarding what “substantially limits” means.*

However – OCR has cautioned that the determination must be made on a case-by-case basis and should consider:

- 1. The nature and severity of the impairment*
- 2. The duration or expected duration of the impairment and*
- 3. The permanent, long-term, or expected impact of the impairment*



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“SUBSTANTIALLY LIMITS”

OCR has also cautioned that the student’s disability does not need to affect the student’s ability to learn in order for him/her to be protected under Section 504 -

“Students may have a disability that in no way affects their ability to learn, yet they may need extra help of some kind from the system to access learning. For instance, a child may have severe asthma (affecting the major life activity of breathing) that requires regular medication and regular use of an inhaler while in school. Whether that help is called special education or related services, or supplementary services is irrelevant under Section 504 and Title II. Such questions might be more appropriate under a finding statute such as the IDEA.”

See Letter to McKethan (OCR, January 4, 1995)



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“Major Life Activity”

Means –

Functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working

34 C.F.R. Section 104.3

(This list is not exhaustive)



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The Americans with Disabilities Act (“ADA”)

1. The only federal non-discrimination law that applies to *non-public schools*
2. The ADA was initially passed in 1990
3. Standard analysis for ADA claims – a determination of whether the individual alleging discrimination is disabled
4. “Disability” is defined as:
 - A. A physical or mental impairment that substantially limits 1 or more major life activities
 - B. A *record* of such impairment or
 - C. Being regarded as having such impairment



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ADAAA – Why is this significant?

The ADA Amendments Act of 2008 (“ADAAA”) went into effect on January 1, 2009. Purpose of the Amendments Act - in part, to supersede Supreme Court decisions that narrowly interpreted the ADA’s definition of “disability.”

A number of significant changes were made to the definition of “disability” under the Americans with Disabilities Act.

The Amendments Act also included a conforming amendment to the Rehabilitation Act of 1973, which affects the meaning of “disability” for Section 504.



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“Major Life Activity”

The ADA Amendments Act of 2008 incorporated the definition of “major life activity” into Section 504, supplementing the list to include (without limitation) –

Eating, standing, lifting, bending, reading, concentrating, thinking, writing, communicating and interacting with others

See 28 C.F.R. Section 35.108(c)(1)(i)

*** The ADA Amendments Act of 2008 admonishes recipients that the definition of “disability” should be interpreted in favor of broad coverage ***



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ADAAA – Why is this significant?

*** The term “substantially limits” requires a lower degree of functional limitation than the standard previously applied by the courts. *No longer does an impairment need to prevent or severely or significantly restrict a major life activity to be considered “substantially limiting.”* Please note – not every impairment will constitute a disability. ***



ADAAA – Why is this significant?

Further, “substantially limits” is to be interpreted *without regard to the ameliorative effects of mitigating measures* (other than ordinary eyeglasses or contact lenses). Mitigating measures like medications, prosthetic devices, assistive devices or learned behavioral or adaptive neurological modifications that an individual may be using to eliminate or reduce the effects of an impairment *can no longer be considered* when determining whether a person has a “substantially limiting” impairment.



ADAAA – Why is this significant?

AND –

The term “substantially limits” is to be construed broadly – in favor of expansive coverage, to the maximum extent permitted by the ADA.

Which means that more people should qualify than previously did qualify.

Further – “an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.”



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INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT (IDEA)



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Illinois Eligibility Categories – 23 Ill.Admin. Code 226.75

Disability: IDEA identifies 13 disabilities as the basis for students' eligibility for special education and related services.

These disabilities

- | | | | |
|----|-------------------------|-----|-------------------------------|
| 1) | Autism | 8) | Orthopedic Impairment |
| 2) | Deaf-Blindness | 9) | Other Health Impairment |
| 3) | Deafness | 10) | Specific Learning Disability |
| 4) | Emotional Disability, | 11) | Speech or Language Impairment |
| 5) | Hearing Impairment | 12) | Traumatic Brain Injury |
| 6) | Intellectual Disability | 13) | Visual Impairment |
| 7) | Multiple Disabilities | | |

shall be defined as set forth in 34 C.F.R. 300.8(c). In addition, for purposes of this Part, "autism" shall include, but not be limited to, any Autism Spectrum Disorder that adversely affects a child's educational performance.



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“INTELLECTUAL DISABILITY”

23 Ill.Admin. Code 226.135 - Additional Procedures for Students Suspected of or Having an Intellectual Disability

In addition to the requirements set forth in Sections 226.110 and 226.120, the district shall ensure that a psychological evaluation *has been conducted* and a recommendation for eligibility *made by a school psychologist* for any child who is suspected of or determined to have an intellectual disability.

NOTE: Illinois used to use the term “Cognitive Disability” and the federal regulation used to use the term “Mental Retardation.” Both were recently changed to reflect “Intellectual Disability.”



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FEDERAL DEFINITION - AUTISM

34 C.F.R. 300.8(c) – “Autism” means:

A developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child’s educational performance. (A child who manifests the characteristics of autism after age 3 could be diagnosed as having autism if the other criteria of this Section are satisfied.) Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance.



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ILLINOIS DEFINITION - AUTISM

105 ILCS 5/14-8.02(b) – “A student who has a disability on the autism spectrum...”

... Which includes autistic disorder, Asperger’s disorder, pervasive developmental disorder not otherwise specified, childhood integrative disorder, and Rett Syndrome, as defined in the DSM-IV...



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ILLINOIS DEFINITION - AUTISM

105 ILCS 5/14-8.02(b) – “A student who has a disability on the autism spectrum...”

- But of course we have the DSM-V now which classifies all of these as Autism Spectrum Disorder.
- The new classification system eliminates the previously separate subcategories on the autism spectrum, including Asperger syndrome, PDD-NOS, childhood disintegrative disorder and autistic disorder. These subcategories will be folded into the broad term autism spectrum disorder (ASD).



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ILLINOIS LAW - AUTISM

(Added in 2008)

105 ILCS 5/14-8.02(b). When developing an IEP for a child with autism, the IEP team *MUST* consider *all* of the following factors:

- (1) The verbal and nonverbal communication needs of the child
- (2) The need to develop social interaction skills and proficiencies
- (3) The needs resulting from the child's unusual responses to sensory experiences
- (4) The needs resulting from resistance to environmental change or change in daily routines
- (5) The needs resulting from engagement in repetitive activities and stereotyped movements
- (6) The need for any positive behavioral interventions, strategies, and supports to address any behavioral difficulties resulting from autism spectrum disorder
- (7) Other needs resulting from the child's disability that impact progress in the general curriculum, including social and emotional development



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EMOTIONAL DISABILITY

A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- 1. An inability to learn that cannot be explained by intellectual, sensory or health factors*
- 2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers*
- 3. Inappropriate types of behavior or feelings under normal circumstances*
- 4. A general pervasive mood of unhappiness or depression*
- 5. A tendency to develop physical symptoms or fears associated with personal or school problems*

**** Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section. *** See 34 C.F.R. 300.8*



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OTHER HEALTH IMPAIRMENT

Means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, and that –

- 1. Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and*
- 2. Adversely affects a child's educational performance*

See 34 C.F.R. 300.8



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ADHD

According to the 11th Circuit, because a high school student's ADHD diagnosis had not affected his academic performance during his first 3 years of high school, the school district's decision to not qualify the student for special education eligibility was proper. "To qualify for IDEA services, the student needed to show that his ADHD had an adverse effect on his academic performance and that he needed special education as a result." The Court relied on the student's teachers who did not recommend special education eligibility and who indicated that the student's ADHD did not impede his learning, and that the student made progress when he put forth sufficient effort. See *Durbrow v. Cobb County School District*, 118 LRP 15545 (11th Cir. 2018)



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SPECIFIC LEARNING DISABILITY

A specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language -- spoken or written -- that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. These include conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

34 CFR 300.8(c)(10)



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SPECIFIC LEARNING DISABILITY

The federal Office of Special Education and Rehabilitative Services (OSERS) released guidance to state and local educational agencies on October 23, 2015 related to SLD.

This guidance clarifies that students with specific learning disabilities—such as dyslexia, dyscalculia, and dysgraphia—have unique educational needs. It further clarifies that there is nothing in the IDEA that would prohibit the use of the terms dyslexia, dyscalculia, and dysgraphia in a student’s evaluation, determination of eligibility for special education and related services, or in developing the student’s individualized education program (IEP).



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SPECIFIC LEARNING DISABILITY

OSERS also stated:

OSERS reminds SEAs and LEAs about previous guidance regarding the use of MTSS, including RTI, and timely evaluations, specifically that a parent may request an initial evaluation at any time to determine if a child is a child with a disability under IDEA (34 CFR §300.301 (b)), and the use of MTSS, such as RTI, may not be used to delay or deny a full and individual evaluation under 34 CFR §§300.304-300.311 of a child suspected of having a disability. (Emphasis added)



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SPECIFIC LEARNING DISABILITY

23 Illinois Administrative Code, Part 226.125 Specific Learning Disability: Dyslexia

- a) *For the purposes of this Section, dyslexia means a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge. (Definition from the Board of Directors of the International Dyslexia Association.)*
- b) *In accordance with 34 CFR 300.8(b)(10), dyslexia is one of a number of disorders included as a specific learning disability that may adversely affect the student's educational performance and result in the child's eligibility for special education and related services.*
- c) *Each child suspected of having dyslexia or identified as dyslexic shall be referred for an evaluation in accordance with the requirements of 34 CFR 300.304 through 300.311 and Subpart B of this Part.*



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BEST PRACTICES FOR DETERMINING ELIGIBILITY FOR SPECIAL EDUCATION SERVICES



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HOW TO OBTAIN SPECIAL EDUCATION SERVICES

- ❖ Child Find responsibilities – *affirmative duty*
- ❖ Referral for initial Case Study Evaluation (CSE)
 - May be made by a parent, employee of school district, ISBE, another State agency, or a community service agency
 - For any child suspected of having a disability
 - *RTI does not delay District's need to respond to a parent request for CSE*
 - NOTE – typically, referrals are made by school district, parents, or professionals with knowledge of the child



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HOW TO OBTAIN SPECIAL EDUCATION SERVICES

Factors for school district staff to consider when determining a CSE is warranted:

- ❖ Child's educational progress
- ❖ Interaction with others
- ❖ Other functioning in the school environment*
 - District's must consider other functioning such as emotional and social.

See 23 Ill.Admin. Code Section 226.100(b)



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HOW TO OBTAIN SPECIAL EDUCATION SERVICES

- ❖ District has **14 school days** to respond to parent requesting CSE
- ❖ Can use screening data and conduct preliminary procedures to assist in making determination
- ❖ If decline to do a CSE – must provide notice **in writing with an explanation**



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IS A DENIAL OF A CSE JUSTIFIED?

- ❖ Medical diagnosis has to constitute a disability under the IDEA, mere medical diagnosis does not qualify)(Alopecia Areata). *Bloom Township HS Dist. 206*, 112 LRP 21291 (April 23, 2012).
- ❖ “Educational performance” means more than a child’s ability to meet academic criteria. It must also include reference to the child’s development of communication skills, social skills, and personality, as the Code, itself, requires. 34 C.F.R. 300.533(a)(1); *Mary P. v. ISBE*, 919 F. Supp. 1173 (N.D. Illinois 1996).
- ❖ Truancy does not automatically exclude special education. Emotional disability should be evaluated independently.
- ❖ Drug and Alcohol Issues: Can be self-medication for underlying emotional issues.



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HOW TO OBTAIN SPECIAL EDUCATION SERVICES

- ❖ Parents can request a due process hearing to contest District's refusal to conduct CSE
- ❖ If District agrees to conduct CSE, parent must sign consent for evaluation (@ domain meeting)
- ❖ Date parents sign starts the 60 school day timeline for District to complete CSE



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HOW TO OBTAIN SPECIAL EDUCATION SERVICES

DOMAIN MEETING -

- ❖ IEP team determines relevant domains for CSE
- ❖ All meetings must be scheduled at a mutually convenient time for parents and school
- ❖ 8 domain categories (health, vision, hearing, social emotional status, general intelligence, academic performance, communication status, motor abilities)



HOW TO OBTAIN SPECIAL EDUCATION SERVICES

- ❖ Conference/meeting is held to determine eligibility (adverse impact)
 - ❖ If eligible, an IEP is written for the child (also within that 60 school day timeframe)
 - ❖ Initial placement decision made
- ** School must wait 10 school attendance days before placement and services are made (parents can waive this waiting period) **



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HOW TO OBTAIN SPECIAL EDUCATION SERVICES

The IDEA requires that specific individuals be present at the IEP meeting:

- ❖ a parent
- ❖ a regular education teacher
- ❖ a special education teacher
- ❖ an individual from the district capable of making decisions and committing District resources (LEA representative)
- ❖ an individual who can interpret the instructional implications of evaluation results
- ❖ whenever appropriate, the child
- ❖ *at the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child*



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HOW TO OBTAIN SPECIAL EDUCATION SERVICES

- ❖ Eligibility is based on federal and state definitions of a disability
- ❖ The decision is made by a *majority* (not unanimous) of the IEP team
- ❖ The existence of a DSM diagnosis does not necessarily mean a child will be eligible for services



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YOU HAVE AN IEP!

NOW WHAT????!!!



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The District **MUST** provide a **FAPE**

What is a FAPE?

A free and appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school



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EDUCATION

❖ FREE

❖ APPROPRIATE

❖ PUBLIC

❖ EDUCATION



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“FREE”

No charge to student or his family -
parents or guardian

- ❖ *Parks v. Pavkovic*: “FREE MEANS FREE”
- ❖ Irrelevant who is paying



“APPROPRIATE”

ROWLEY CASE:

According to each student’s unique needs

The facts of *Rowley*...



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“APPROPRIATE”

THE ROWLEY CASE – ESTABLISHING EDUCATIONAL BENEFIT

Standard for Special Education Services – “Some educational benefit”

- ❖ **Not the MAXIMUM, not the bare minimum**
- ❖ **Not a “Cadillac,” just a serviceable “Chevy.”**

Two-Prong Legal Analysis

- 1. PROCEDURAL: Has the school district complied with the procedural requirements of the IDEA?**
- 2. SUBSTANTIVE: Is the IEP “Reasonably Calculated” to confer educational benefit?**



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“PUBLIC EDUCATION”

PROVIDED

OR--

PAID FOR

BY--

A PUBLIC SCHOOL DISTRICT

(LOCAL EDUCATION AGENCY “LEA”)



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Andrew F. v. Douglas County School District Re-I, 137 S. Ct. 988, (U.S. S. Ct. 2017)

- ❖ **In March of 2017, the U.S. Supreme Court issued its ruling regarding Andrew F., a child with Autism, who was eligible for special education services since Kindergarten. Because Andrew’s parents believed his 5th grade IEP was “more of the same,” they placed Andrew in a private school and sought reimbursement from the District. The hearing officer, federal district court and the 10th circuit all denied the parents’ claims for reimbursement.**

On appeal, the Supreme Court declined to follow the 10th Circuit’s interpretation of an “educational benefit” as being “merely more than *de minimus*.”



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According to the Supreme Court, “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make ***progress appropriate*** in light of the child’s circumstances.” (Emphasis added)

“APPROPRIATE PROGRESS” – The Court declined to define it – case-by-case basis – adequacy of the IEP based on each child’s unique needs

The Court stated, “The ‘reasonably calculated’ qualification reflects a recognition that crafting an appropriate program of education *requires a prospective judgment by school officials*. The Act [IDEA] contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child’s parents or guardians.” (Emphasis added)



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What is the 7th Circuit's FAPE formulation?

Education benefit with “progress.”

In *M.B. v. Hamilton Southeastern Schs.*, 668 F.3d 851 (7th Cir. 2011), the 7th Circuit stated, “We reiterate that an IEP is reasonably calculated to enable the child to receive an educational benefit ‘when it is likely to produce progress, not regression or trivial educational advancement’.. . .To prevail on their substantive claim, then, M.B.’s parents must convince this court that the hearing officer, the Board and the district court clearly erred in determining that M.B. was making progress under his IEP.”



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THE IEP DOCUMENT

AN OVERVIEW



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IEP - BASICS

- ❖ IEP to be based on measurable goals
- ❖ 10-day parental notification required for all IEP meetings (or a record of reasonable attempts to notify parent)
- ❖ A parent may request an IEP meeting at anytime (within reason), District has 10 days after receipt of request to agree (or not) to convene meeting



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IEP - BASICS

Disability (eligibility) category should NEVER drive services

- ❖ IEP must be *individualized* – Districts should avoid statements indicating that they provide “set” services or that they “don’t provide” a requested service



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AN IEP DOCUMENT IS -

1. A management document that sets forth what resources the school district will make available to the student;
2. A communication document, which clarifies what the student is entitled to based on the exceptional needs identified in the case study evaluation;
3. An accountability document, which specifies the individualized goals, benchmarks or short-term objectives, objective measures of progress toward goal attainment, and the schedule for measuring and reporting goal attainment progress.
4. A record of a meeting.



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WHAT ARE THE COMPONENTS OF THE IEP?

- ❖ ELIGIBILITY
- ❖ SIGN IN SHEET
- ❖ STUDENT'S STRENGTHS AND WEAKNESSES
- ❖ PARENTAL CONCERNS (allow for parents to relay their concerns)
- ❖ PRESENT LEVELS OF PERFORMANCE (ACADEMIC AND FUNCTIONAL)
- ❖ TRANSITION PLAN (IF STUDENT IS 14 ½ OR OLDER)
- ❖ GOALS/OBJECTIVES
- ❖ ACCOMMODATIONS/MODIFICATIONS
- ❖ SPECIAL EDUCATION AND RELATED SERVICE MINUTES
- ❖ PLACEMENT
- ❖ NOTES OF MEETING



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IEP Goal Writing Questions

- ❖ What are the student's strengths?
- ❖ What are the identified student needs?
- ❖ What are the Illinois Learning Standards (or your State standards) that apply to the goal?
- ❖ What is the student's present level of academic achievement and functional performance?
- ❖ What is the goal statement?
- ❖ What is the evaluation criteria for the goal?
- ❖ What are the evaluation tools for the goal?
- ❖ What are the benchmarks or steps toward goal completion?
- ❖ How do we know when the benchmarks have been met?



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Present Levels of Performance

- ❖ All IEP goals and benchmarks or short-term objectives must be predicated on Present Levels of Performance (PLOP or PLEP).
- ❖ If an IEP goal is not predicated on accurate PLOP data, the IEP goal is flawed, as is any evaluation that flows from the goal.



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Present Levels of Performance - II

- ❖ The review of the CSE should involve the extraction of student strengths. Since IEPs are deficit-oriented documents (focusing on what's wrong), it is imperative that a strengths-based approach counter-balances the deficit model. This has significant implications for relationships with students and parents.
- ❖ The student's strengths should be listed prior to writing PLOP and IEP goals.



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Present Levels of Performance - III

1. Does the present levels of performance statement include the student's strengths (what he/she is able to do)?
2. Does the present levels of performance statement indicate what the student is unable to do and how this impacts his/her performance in the general education curriculum?
3. Does the present levels of performance statement include current, measurable data that will correspond with the IEP goals?



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Example of a Good PLOP Statement

Brittany reads and comprehends at the 7.0 grade level on the Woodcock Johnson Achievement Test, writes accurate sentences and paragraphs on writing samples, and her math reasoning skills are 7.5 grade level equivalency as measured by the Woodcock Johnson Achievement Test. When directed by the teacher to work independently, she yells defiantly and refuses to work 80% of observed instances across settings. When given a variable-time delayed redirections to begin work, she pushes her desk materials to the floor and puts her head down, 80% of the observed instances. She does not ask the teacher for assistance when she does not understand the assignment. Brittany's behaviors inhibit her functional performance and achievement in the general curriculum.

[Gibb, G.S/ and Dyches, T.T. (2007). Writing Quality Individualized Education Programs. Boston: Pearson Education, Inc., p. 43.]



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Example of a poorly written PLOP Statement

Brittany functions below grade level in the core academic areas. She refuses to do assignments and acts out when requested to do so.

- ❖ This example is poor because “functions below grade level” is vague.
- ❖ This example is poor because “acting out” is vague.
- ❖ This example is poor because it does not say anything about how the behavior affects Brittany’s performance in the general education curriculum.
- ❖ This example is poor because it does not include sufficient detail to provide descriptive and logical cures for writing accompanying IEP goals.



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Impact of a poorly written PLOP Statement -

- ❖ Poorly developed Present Levels of Performance statements are one of the most common errors in IEP writing.
- ❖ Good Present Levels of Performance statements reference data, including IEP data from the previous year's IEP goals & benchmarks.
- ❖ The goal will not align and will be inaccurate and not measurable. Thus, progress on the IEP cannot be determined.



Anatomy of an Instructional Objective -

1. Who?
2. Will do what?
3. How well?
4. Under What Conditions?



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SMART Criteria

A quality IEP should meet the SMART criteria:

1. Specific goals and benchmarks or short-term objectives.
2. Measurable goals and benchmarks or short-term objectives.
3. Attainable goals and benchmarks or short-term objectives.
4. Relevant goals and benchmarks or short-term objectives.
5. Trackable goals and benchmarks or short-term objectives.



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How is progress defined?

- ❖ Goals must be measurable
- ❖ Progress updates
- ❖ Annual review meetings
- ❖ Re-evaluations, when needed and triennially
- ❖ Drafts of reports/goals
- ❖ School observation



MORE TO CONSIDER IN THE IEP DOCUMENT -

- ❖ Are the special education services and related services included?
- ❖ What about any supplementary aids and services that the school is to provide?
- ❖ Was there a discussion regarding transportation and extended school year services?
- ❖ Was there a discussion, and does the IEP reflect, how your child will make progress in the general education environment and participate in extra-curricular and other nonacademic activities?
- ❖ What is the projected date that services will begin and where is the location(s) that your child will receive those special education and related services?
- ❖ Should you waive the ten-day timeframe for the IEP to be implemented?



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AND DON'T FORGET...

IDEA Requires:

- ❖ Annual review of IEP
- ❖ Three year re-evaluation (triennial evaluation)
- ❖ Transfer students (must provide comparable services until the district adopts prior IEP or develops, adopts and implements a new IEP)



NEXT UP...

PLACEMENT



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BASIC FACTS

Percentage of Time Spent Inside the Regular Classroom (Ages 6-21)

	More than 80% of day	40-70% of the day	Less than 40% of the day	Separate school or residential facility
Autism -	30.8%	22.3%	30.8%	15.2%
Deaf/Blind –	21.7%	8.7%	30.4%	39.1%
ED -	33.6%	20.0%	16.0%	29.4%
HI -	60.0%	14.9%	14.4%	8.5%
ID -	4.4%	29.4%	49.8%	15.9%
Multiple D. -	2.6%	10.4%	51.3%	32.5%
OHI -	57.3%	27.1%	9.8%	4.2%
SLD –	54.2%	36.8%	6.8%	1.0%
SLI -	91.0%	2.3%	1.0%	0.1%
TBI -	27.3%	30.3%	28.3%	12.3%

**Data from U.S. Department of Education
Part B Census, published 2017**



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“LEAST RESTRICTIVE ENVIRONMENT”

- ❖ What is LRE?
- ❖ Mainstreaming? Inclusion? Is it required? When?
- ❖ What is the range of educational placements?
- ❖ What is the test according to the 7th Circuit?



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“LEAST RESTRICTIVE ENVIRONMENT”

A History Lesson

Prior to the enactment of the IDEA (1975), many children with disabilities were routinely excluded or segregated from children without disabilities.

We know that interaction with non-disabled peers can provide many benefits including:

- ❖ Typical peers serve as models for children with disabilities.
- ❖ Natural friendships develop within the child’s home community.
- ❖ Children with disabilities learn new academic and social skills within natural environments, facilitating generalization of skills.
- ❖ All students learn to value diversity.



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LRE vs. Mainstreaming vs. Inclusion

OSEP Memorandum 95-9, 21 IDELR 1152 (OSEP 1994) –
Generated to provide guidance regarding LRE.

Introduction - The least restrictive environment (LRE) requirements of Part B of the Individuals with Disabilities Education Act (IDEA) have been included in the law in their present form since 1975. However, these requirements continue to generate complex and interesting questions from the field. In particular, questions have been raised about the relationship of IDEA's LRE requirements to "inclusion."



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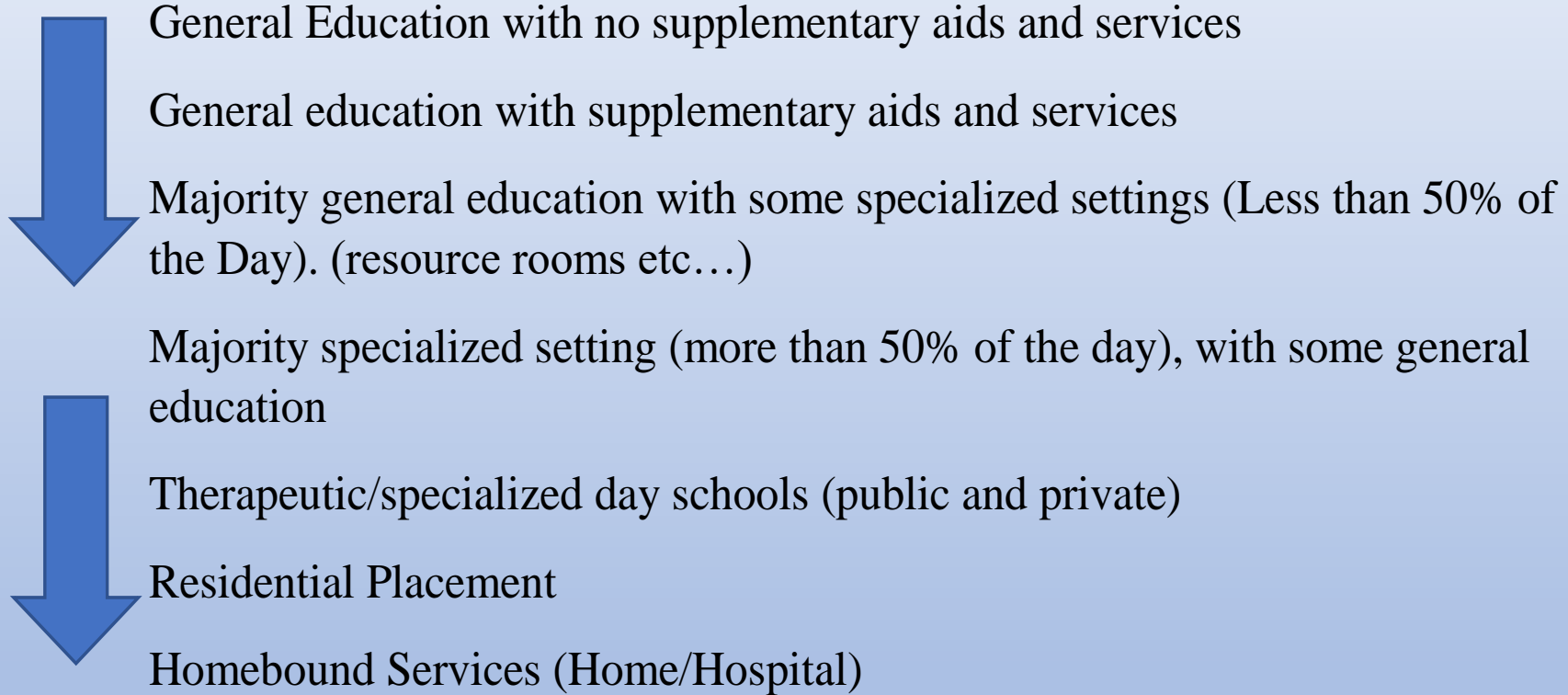
LRE vs. Mainstreaming vs. Inclusion

- ❖ **IDEA does not use the term "inclusion," consequently, the Department of Education has not defined that term. However, IDEA does require school districts to place students in the LRE.**
- ❖ **LRE means that, to the maximum extent appropriate, school districts must educate students with disabilities in the regular classroom with appropriate aids and supports, referred to as "supplementary aids and services," along with their nondisabled peers in the school they would attend if not disabled, unless a student's IEP requires some other arrangement.**
- ❖ **This requires an individualized inquiry into the unique educational needs of each disabled student in determining the possible range of aids and supports that are needed to facilitate the student's placement in the regular educational environment before a more restrictive placement is considered.**



“LEAST RESTRICTIVE ENVIRONMENT”

Continuum of Special Education Placements



“LEAST RESTRICTIVE ENVIRONMENT”

34 CFR 300.116 Addresses Placement

- ❖ In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that the placement decision is made "by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options." 34 CFR 300.116 (a)(1).
- ❖ The placement decision must be based on the child's IEP. 34 CFR 300.116(b)(2)

Tips:

- IEP goals should be written in advance of a decision on placement.
- Goals should be written to support the child's needs and NOT be based on a selected placement. (Can be interpreted as pre-determination)
- Placement decision is generally made at the end of the IEP meeting, although not federally required



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“LEAST RESTRICTIVE ENVIRONMENT”

A child with a disability does not need to fail in the regular education environment before a local educational agency can consider or implement placement in a more restrictive setting.

***Or fail in any setting to jump ahead on the continuum...

Letter to Cohen, 25 IDELR 516 (OSEP 1996); and OSEP Memorandum 95-9, 21 IDELR 1152 (OSEP 1994).



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What is the LRE test according to the 7th Circuit (Illinois, Indiana, Wisconsin)?

Beth B. v. Van Clay, 282 F.3d. 493 (7th Cir. 2002).

Facts: Beth was a thirteen-year old, severely mentally and physically challenged student with Rett Syndrome. She was nonverbal. Beth used communication devices, and a wheelchair for mobility. Her cognitive ability was “difficult to estimate.” The district served Beth in a regular classroom from ages seven to thirteen.

Since the first grade, Beth worked with a one-on-one aide at all times. Beth’s curriculum was geared toward someone at a preschool level.

At age thirteen, the district recommended placement in an Educational Life Skills (ELS) program. The ELS program was located in a public school building other than Beth’s home campus and would serve students between the ages of six and twenty one with disabilities. The parents did not agree to the recommended placement and filed for a due process hearing.



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BETH B. – 7TH CIRCUIT TEST

The Court rejected Beth's parents assertion that she should remain in the mainstream, stating:

- ❖ “Beth's parents confuse the FAPE side of the coin with the LRE side. They contend that Beth's current placement satisfies the Rowley standard because she received an educational benefit at Lake Bluff Middle School. So long as the regular classroom confers "some educational benefit" to Beth, they argue, [], the school district cannot remove her from that setting. This language is misplaced.”
- ❖ “Each student's educational situation is unique. We find it unnecessary at this point in time to adopt a formal test for district courts uniformly to apply when deciding LRE cases. The Act itself provides enough of a framework for our discussion; if Beth's education at Lake Bluff Middle School was satisfactory, the school district would be in violation of the Act by removing her. If not, if its recommended placement will mainstream her to the maximum appropriate extent, no violation occurs.”



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HOME SCHOOL, TDS, RESIDENTIAL

Moving along that Continuum...

Can the student's needs be met in the mainstream (home school) setting, *i.e.* will he/she get a satisfactory education?

- ❖ What benefit will the child receive from access to non-disabled peers?
- ❖ Can the child access that benefit?
- ❖ What level of related services/therapeutic support does the student need?



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HOME SCHOOL, TDS, RESIDENTIAL

Moving along that Continuum...

- ❖ Does the District have the appropriate educational services to meet the student's needs (life skills, multisensory classes, autism services)?
- ❖ If already in special education, has the student met his/her goals and objectives?
- ❖ Private evaluations? Recommendations?
- ❖ Discipline, attendance (school refusal anxiety)?
- ❖ Functioning in-school stronger evidence than out-of-school...



Consent for a Change of Placement – Not Necessary

Remember – A change of placement does not trigger the parental consent requirements under IDEA. Parents only consent to the initial placement of their child (and evaluations/reevaluations).

The remedies to a disputed change in placement is to file for a due process hearing and invoke “stay-put” or to revoke consent for special education.



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EFFECTIVE ADVOCACY: SPECIAL EDUCATION ATTORNEY TIPS



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Tip #1 – Always Be Prepared

- ❖ Educate Yourself
 - Read about parental rights
 - Review your child's last IEP/school file
- ❖ Begin Preparing Early for School Meetings
 - Obtain a private evaluation/other support from a private provider
 - Request a copy of the evaluations and draft IEP to be provided 5 days prior to the meeting



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Tip #2

Use Private Providers - Ensure you have proper clinical evaluations/summaries when asking for services or accommodations

- ❖ Can you back up your request with clinical recommendations?
- ❖ Did you bring copies of evaluations/assessments to the IEP meeting?

Remember – the District has to “consider” all requests. Have you given the District enough time to “consider” these requests or recommendations?



Tip #3 – Employ the Best Private Providers

- ❖ Only use private providers who will accompany you to an IEP meeting and will speak with school staff
- ❖ Ask the provider prior to obtaining services whether they attend school meetings



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Tip #4

Consider conducting an observation of your child prior to the IEP Meeting

- ❖ You can learn a lot by observing a class, partial day, or full day
- ❖ Your therapist or other service provider can observe
- ❖ Advocates can observe (usually not attorneys)



Tip #5

Bring others to the meeting who can help your child, and help you to advocate for your child

Invite private providers to the IEP meeting who can lend insight

- ❖ Therapist/psychiatrist
- ❖ OT/SLP
- ❖ Respite caregiver
- ❖ Play therapist
- ❖ Tutor
- ❖ Who else knows your child?



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Tip #6

Remember that the educators may not know all about your child's disability

- ❖ Set up a training for them at school
- ❖ Request educator training in the area of the disability
- ❖ Suggest an in-service training
- ❖ Bring speakers to educator/social work conferences
- ❖ Use private providers (evaluations/letters/participation)



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Tip #7

The documentation is important:

Take good notes at the meeting or bring a support person who can

- ❖ Request a paper copy of the completed IEP document to be handed to you at the conclusion of the meeting. Do not wait to have it sent to you.
- ❖ If you do not agree with the IEP notes, draft up a “dissent” and ask to have it attached to the IEP document.



Tip #8

Avoid feeling so overwhelmed or intimidated that you don't ask questions

When is the right time to ask? *Anytime you have a question.*

- ❖ When you first have a concern
- ❖ Before a meeting with the school
- ❖ During a meeting with the school
- ❖ After a meeting with the school



Tip #9

Do not give up too easily

- ❖ Be persistent
- ❖ There's usually more than one way to accomplish your goal
- ❖ Remember that the IEP is an individualized program for your child and special education is a PROCESS



Tip #10

Avoid fighting only for the principle

- ❖ IEP meetings work best when everyone checks their ego at the door
- ❖ Is the school meeting your child's needs in a different way than you requested?
- ❖ Sometimes there's more than one way

Fighting for the principle
can cost you emotionally and financially



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QUESTIONS?



THANK YOU!

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