

Special Education & IDEA: ***HOW TO SAVE YOUR DISTRICT*** ***MILLIONS of DOLLARS***



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Individuals With Disabilities Education Act (IDEA)

- Federal Law
 - Public Law 94-142 the Education for All Handicapped Children Act of 1975
 - Law mandated the role of parents as **equal** partners in making educational decisions for their children
 - Empowers parents to become **Educational Advocates** for their children

Purpose

To ensure that all children with disabilities have available to them a **free appropriate public education** that emphasizes special education and related services designed to meet their **unique needs** and prepare them for:

- *Further education*
- *Employment*
- *Independent living*

Findings and Purpose of IDEA

- Disability is a natural part of the human experience and in no way diminishes the right of individuals to **participate** in or **contribute** to society.
- Improving educational results for children with disabilities is an essential element of our national policy of **ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency** for individuals with disabilities.

IDEA 2004 :

- ❑ Modified the finding regarding high expectations by deleting access to the “general curriculum” and inserted access to the “general education curriculum in the regular classroom, to the maximum extent possible, in order to meet developmental goals, to the maximum extent possible, and challenging expectations that have been established for all children;
- ❑ To prepare them to lead productive and independent adult lives, **to the maximum extent possible.”**

IDEA 2004

- Added a finding that “as graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities.”

IDEA 2004

- ❑ Modified the purpose section to clarify that the purpose of IDEA includes not only preparing children with disabilities for employment and independent living but also preparation for “further education.”

Education is a BROAD concept

- Academic
- Social
- Emotional
- Skills that would help a child to function as an independent member of society

FAPE in the LRE

- Free Appropriate Public Education

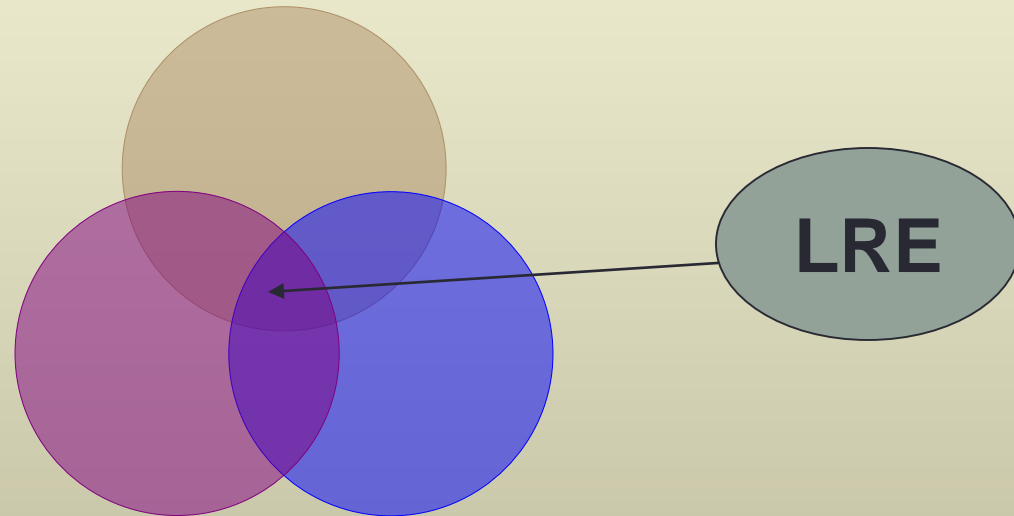
In

- The Least Restrictive Environment



Only One LRE

APPROPRIATE PLACEMENT 1

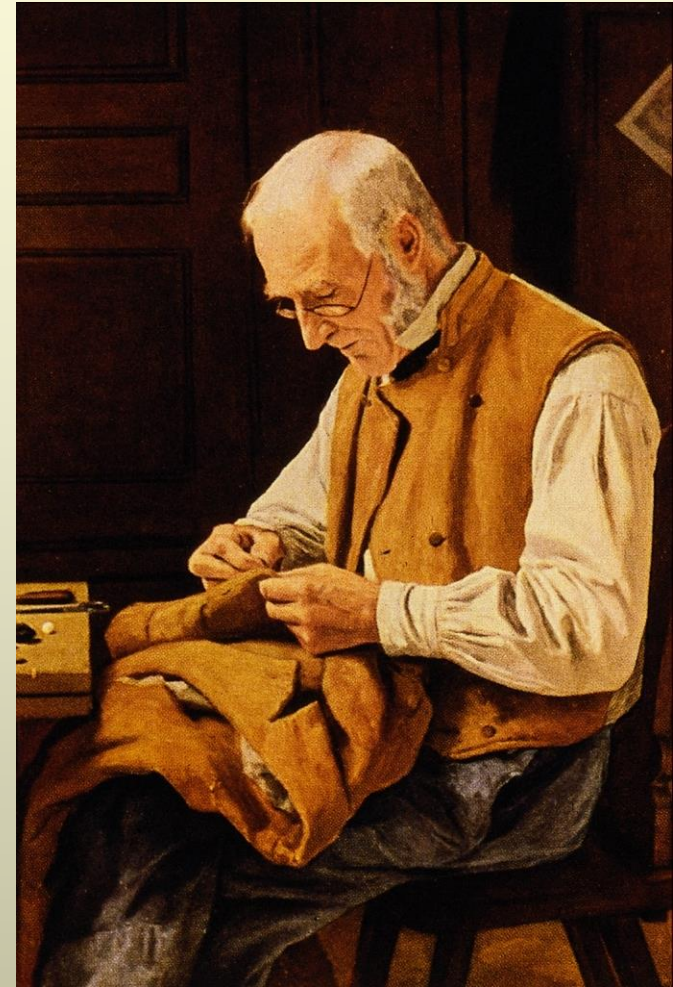


APPROPRIATE PLACEMENT 2

APPROPRIATE PLACEMENT 3

What is Appropriate?

- Individually tailored
- Meaningful educational benefit



ENDREW v. DOUGLAS COUNTY– United States Supreme Court March 22, 2017

To meet its substantive obligations 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.

ENDREW v. DOUGLAS COUNTY– United States Supreme Court March 22, 2017

* Court explicitly rejected the standard for FAPE that was controlling in Colorado’s federal circuit -- the Tenth Circuit – which held that a FAPE was achieved if “....the IEP is calculated to confer an educational benefit that is merely more than de minimis.” By rejecting the Tenth Circuit standard, the Court explained that a low, “de minimis” expectation would defeat the purpose that the IDEA was enacted to address – “Congress’ perception that a majority of handicapped children in the United States ‘were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to “drop out.”

ENDREW v. DOUGLAS COUNTY– United States Supreme Court March 22, 2017

“After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement....A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.”

Free Appropriate Public Education (FAPE)

In accordance with IDEA, all disabled children are entitled to a free, appropriate public education (FAPE) specific to their unique needs. *20 U.S.C. 1412 (2)(c)*. The *Rowley* Court held that the Basic floor of opportunity will be met when a child receives “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.”

FAPE, cont.

Includes educational programming individually designed to meet the child's unique needs and prepares the child for further education, employment and independent living

The Rowley Decision

- “The theme in the [IDEA] is “free appropriate public education” a phrase which is too complex to be captured by the word ‘equal’ whether one is speaking of opportunities or services.”
- “The contours of an appropriate education must be decided on a case-by-case basis. FAPE is tailored to the unique needs of the handicapped child by means of an IEP.”
- “IDEA itself does not define ‘appropriate education’ but leaves to the courts and the hearing officers the responsibility for determining what *FAPE* means for each child.”

Rowley' s Basic Floor of Opportunity

- Maximizing the potential of each child is not required: “Desirable though that goal might be, it is not the standard that Congress imposed upon States which receive funding under the act. Rather, Congress sought primarily to identify and evaluate handicapped children, and to provide them with access to a free public education.”

Part 1 of the Rowley Test

- Has the school district complied with the procedural requirements set out in the IDEA
 - A procedural violation will result in the denial of FAPE only if it:
 - -impedes the child's right to receive FAPE.
 - -Significantly impedes the parents' participation in the decision-making process.
 - -Caused a deprivation of educational benefits.

Part 2 of the Rowley Test

- Is the IEP reasonably calculated to enable the child to receive educational benefit?

Definition of FAPE

In *Polk v. Central Susquehanna Int. Unit #16*, 853 F.2D 171 (3rd Cir. 1988) the Court indicated that IDEA “calls for more than trivial educational benefit and requires a satisfactory IEP to provide significant learning and confer meaningful benefit.

Definition of Education

- Educational performance includes the child's development of communication skills, social skills, and personality. *Mary P. v. Illinois State BOE, 919 F.Supp. 1173 (D.N.D. Ill 1996)*
- A district must consider non-academic areas in determining educational performance. *Letter to Lybarger, 17 EHRLR 54 (OSEP 1990)*

FAPE

“the court must consider the potential of the particular disabled student before it...The benefit must be gauged in relation to the child’s potential. When students display considerable intellectual potential, IDEA requires a great deal more than a negligible benefit.”

Meaningful educational benefit

Means progress
in accordance
with the child's potential



‘De Minimus’ Benefit Insufficient

- The educational benefit the student receives must be more than ‘de minimus.’
- There must be some tangible gain in abilities.
- More than trivial educational benefit.
- The IEP must confer meaningful benefit.

Achievement of Goals

- The provision of FAPE does not necessarily require that a student achieve each of the IEP goals and objectives.
- The achievement of goals is one measure of educational benefit, but not the only measure.
- The IEP is not a performance contract.

Passing Grades

- Passing grades and advancing from grade to grade are important factors to consider but they do not automatically confer FAPE.
- DS. V. Bayonne Board of Education.

Least Restrictive Environment

Can the child be educated with nondisabled peers in his or her public school?

If not the public school may or may not be the LRE



Placement

- Placement is the appropriate learning environment for the child.
 - IEP team must consider placement in the regular education setting first.
 - Modifications-a change in the type and amount of work expected of the students.
 - Accommodations - change how students learn and the ways they demonstrate what they have learned.

Free Appropriate Public Education

- Mainstream class with curricular or instructional modifications or specialized instruction.
- Assistive technology devices and services as defined in N.J.A.C. 6A:14-1.3
- Teacher aides
- Related Services
- Integrated therapies

Cont....

- Consultation Services
- In-class resource programs
- Pull out resource programs
- Self Contained class
- A NJ approved private school for students with disabilities
- A non-approved but accredited private school for students with disabilities

Cont....

- Home Instruction
- Residential Placement

Section 504

- Section 504 of the Rehabilitation Act of 1973:
 - Designed to prevent any form of discrimination for eligible students with a disability
 - Parents may request accommodations to level the playing field for eligible students with a disability- “equal opportunity.”

Eligibility Under Section 504

- For purposes of Section 504, a “disabled person” is one who:
- Has a physical or mental impairment; which **substantially limits** one or more major life activities.
- Has a record of such impairment, or;
- Is regarded as having such an impairment. (it is about the degree of impairment, NOT the diagnosis.

What are Major Life Activities?

- Caring for oneself
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Reading
- Concentrating
- Thinking
- Communicating
- Speaking
- Breathing
- Learning*
- Working
- Behavior

What Factors Determine Substantial Limitation?

- Factors for determining substantial limitation include:
 - Does the impairment result in failure or under-achievement when compared to their same age, non-disabled peers?
 - Does the impairment impact a major life activity?
 - Does the impairment last at least six months?
 - Will the impairment disappear without any intervention from the school?

What are some examples of classroom Section 504 Accommodations?

- Tailoring homework assignments
- Changing the way a test is given
- Simplifying instructions about assignments
- Providing a copy of peer notes
- Supplementing verbal instructions with visual instructions
- Using behavioral management techniques

Cont...

- Oral Testing
- Using tape recorder
- Computer-aided instruction
- Providing nursing services to supervise administration of medication

WHERE DOES THE BREAKDOWN OCCUR?

- 1. Lack of knowledge of the IDEA process;
- 2. Lack of philosophy;
- 3. Lack of communication among constituent groups;
- 4. Failure to adhere to the IEP Team collaborative process;
- 5. Failure to differentiate instruction.

THANK YOU

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