

How to determine



# Educational Benefit

LENORE KNUDTSON, PINGORA CONSULTING, LLC



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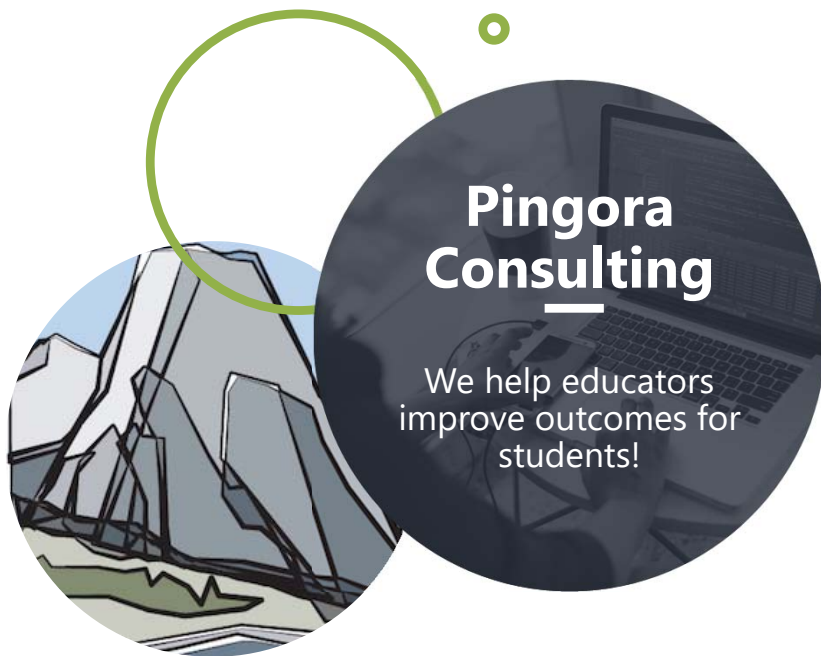
# Educational Benefit

LENORE KNUDTSON, PINGORA CONSULTING, LLC

WAVES  
April 2020

# LENORE KNUDTSON

I'm appreciative of the long partnership with WDE. Thank you for this opportunity.



## Be a life-long learner.

It is the responsibility of every education professional to think deeply, sharpen the skill set, learn new things, and improve outcomes on behalf of students.

- ✓ Lean in!
- ✓ Be a leader!



# TODAY'S TOPICS

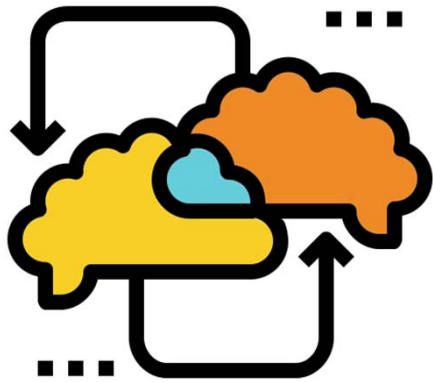


<b>Teamwork</b>	<b>Aligning Services &amp; Needs</b>	<b>Provide Services</b>	<b>Educational Benefit</b>	<b>Will you know it when you see it?</b>
<ul style="list-style-type: none"><li>• Team sharing</li><li>• Accountability</li><li>• Better decisions</li><li>• Less blame</li><li>• Better outcomes</li></ul>	<ul style="list-style-type: none"><li>• Based on needs.</li><li>• Period.</li><li>• End of story</li></ul>	<ul style="list-style-type: none"><li>• Consistent w/ IEP</li><li>• No freestyling</li><li>• Period.</li></ul>	<ul style="list-style-type: none"><li>• FAPE</li><li>• Progress</li><li>• Behavioral needs</li><li>• Reasonable</li><li>• Meaningful</li></ul>	<ul style="list-style-type: none"><li>• The IEP</li><li>• Stagnate</li><li>• Unexpected</li></ul>



# Teamwork

Brilliant!



- Decisions are made by teams.
- Teams share input.
- Teams share responsibility.



If you haven't included the parents in decision-making, the more likely they are to dispute your decision.

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# Parent Participation

- It has NEVER been more important than NOW to communicate with parents.
- Special education has experienced unprecedented times.
- Lack of communication builds mistrust.
- Mistrust breeds disagreement.



# Parent Participation



## **DON'T**

DON'T exclude parents from the decision-making process.



## **DON'T**

DON'T make unilateral changes.



## **DON'T**

DON'T rely on compensated. to remediate unilateral changes.





# WHY EDUCATIONAL BENEFIT?

It is the law!



## THE RESPONSIBILITY TO PROPOSE

School districts have the legal responsibility to propose FAPE, which means an IEP reasonably calculated to provide educational benefit in light of a student's unique circumstance.

## THE RIGHT TO RECEIVE

Students have the right to receive FAPE, which translates to educational benefit. Parents have the right to litigate a denial of FAPE.

## STILL NO GUARANTEE OF SUCCESS

Despite the reciprocal responsibility and right, there is not guarantee of success. Lack of educational benefit means the IEP team has more work to do.

# The Standard



"But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives."

*Endrew F. v. Douglas County Sch. Dist. RE-1*, (U.S. 2017).



# Stagnate Performance



The court affirmed a hearing officer's conclusion that the district denied FAPE to the student with autism and a speech language impairment by repeating many of his IEP goals, failing to substantially change his programming, and failing to reevaluate him before developing a new IEP.

*Downingtown Area Sch. Dist. v. G.W.*, 77 IDELR 155 (E.D.P.A. 2020).



# Slow Progress



The student had significant deficits in reading, writing, and math, but she also spent several hours of each school day outside of the general education setting. Her slow progress, as evidenced by the changes in her baseline performance, showed that she received a meaningful educational benefit.

*K.D. v. Downingtown Area Sch. Dist.*, 72 IDELR 261 (3d Cir. 2018).



# Behavior



The failure to conduct an FBA is not in itself a denial of FAPE if the child's IEP adequately manages her behavior. In this case, however, the district's six-month delay in conducting an FBA deprived the child of necessary behavioral interventions in the interim. Given the child's ongoing behavioral difficulties and documented lack of educational progress, the court concluded that the absence of appropriate behavioral interventions amounted to a denial of FAPE.

*S.S. v. Bd. Of Educ. Of Harford County*, 77 IDELR 182 (D. Md. 2020).





# **Secretary of Education Report to Congress April 27, 2020**

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The Department is not requesting waiver authority for any of the core tenets of IDEA or Section 504, most notably FAPE in the LRE.



Remember,  
FAPE is  
aligned  
with the  
general  
curriculum.

- 34 C.F.R. §300.39(b)(3)
- Specially designed instruction means adapting as appropriate to the needs of an eligible child the content, methodology, or delivery of instruction –
- To address the unique needs of a child that result from the disability, and
- **To ensure access of the child to the general curriculum**, so that the child can meet the educational standards that apply to all children.



# More points of alignment.

(1) The IEP must include a statement of how the child's disability affects the child's **involvement and progress in the general curriculum**. *34 C.F.R. §300.320(a)*.

(4) The IEP must include a description of special education and related services to enable the child to be **involved in and make progress in the general curriculum**. *34 C.F.R. §300.320(a)*.

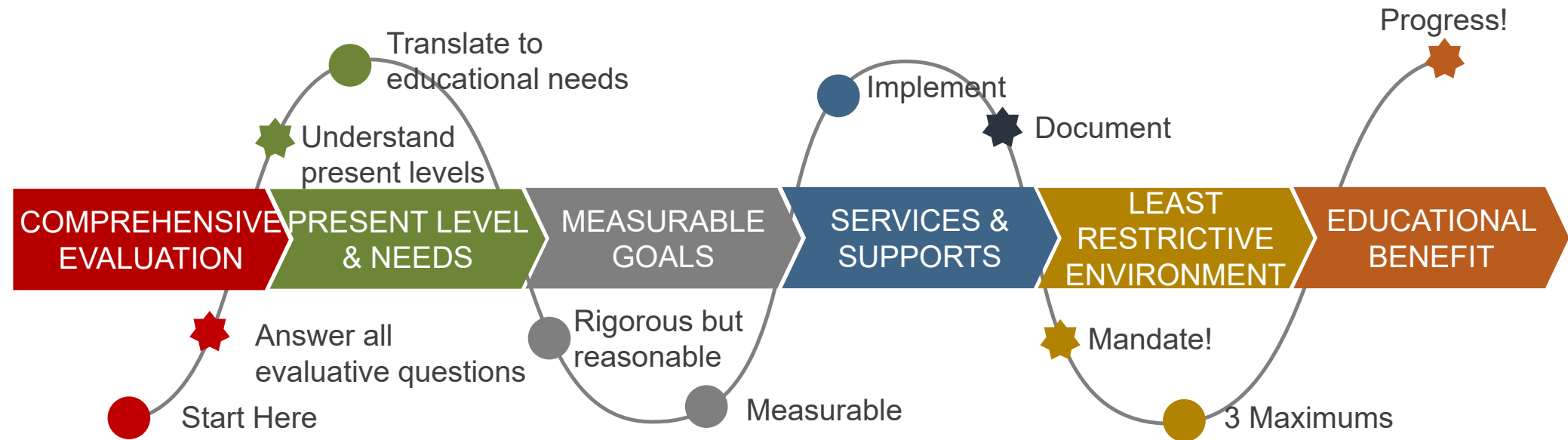
The clear implication is that there is an **education curriculum that is applicable to all children** and that this curriculum is based on the state's academic content standards. *71 Federal Register 46579*.





# The Starting Point

## The FAPE Continuum



## LINKED CONCEPTS.

**A BREAK IN ANY LINK IS  
CRITICAL.**

**NO EDUCATIONAL BENEFIT =  
A BROKEN LINK.**

**GO FIND IT!**

Evaluation

Present  
Levels &  
Needs

Measurable  
Goals

Services and  
Supports

Least  
Restrictive

Educational  
Benefit

# It starts with a comprehensive evaluation.



- An evaluation under the IDEA serves two purposes:
  - Identifying students who need specialized instruction and related services because of an IDEA-eligible disability; and
  - Helping IEP teams identify the special education and related services the student requires.
- *71 Federal Register 46548.*

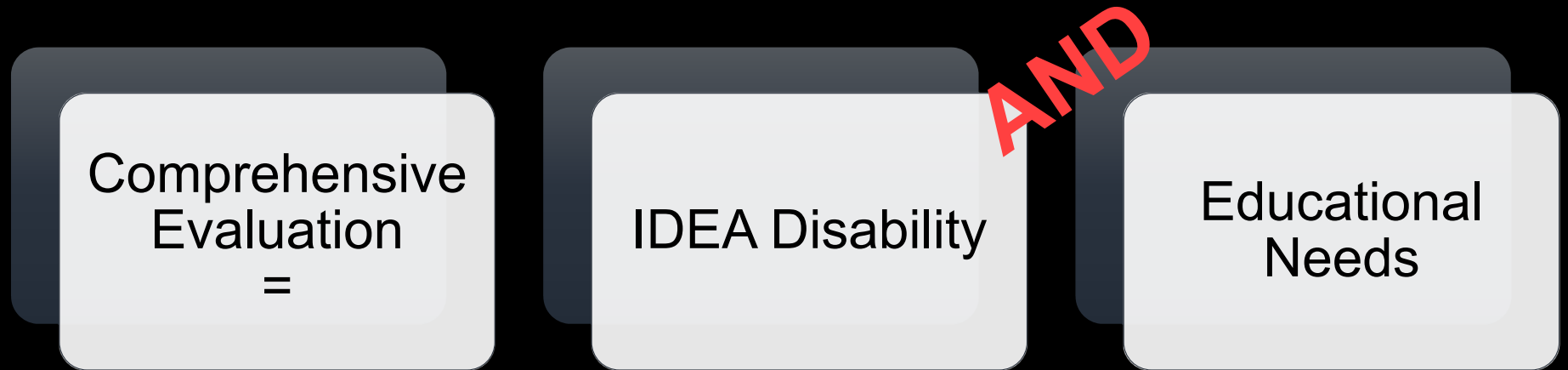
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# Evaluation Wheel



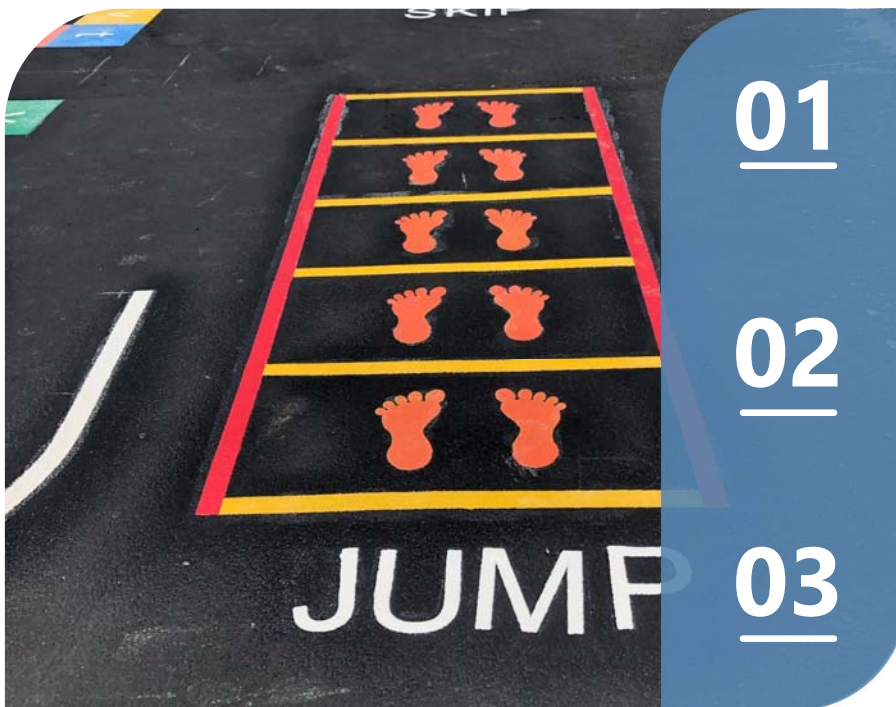
# IDEA's Comprehensive Evaluation

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# PRESENT LEVELS

More than just test scores!



## ACADEMIC AND FUNCTIONAL

Explain present levels of academic achievement and functional performance. What skills does the student currently have?

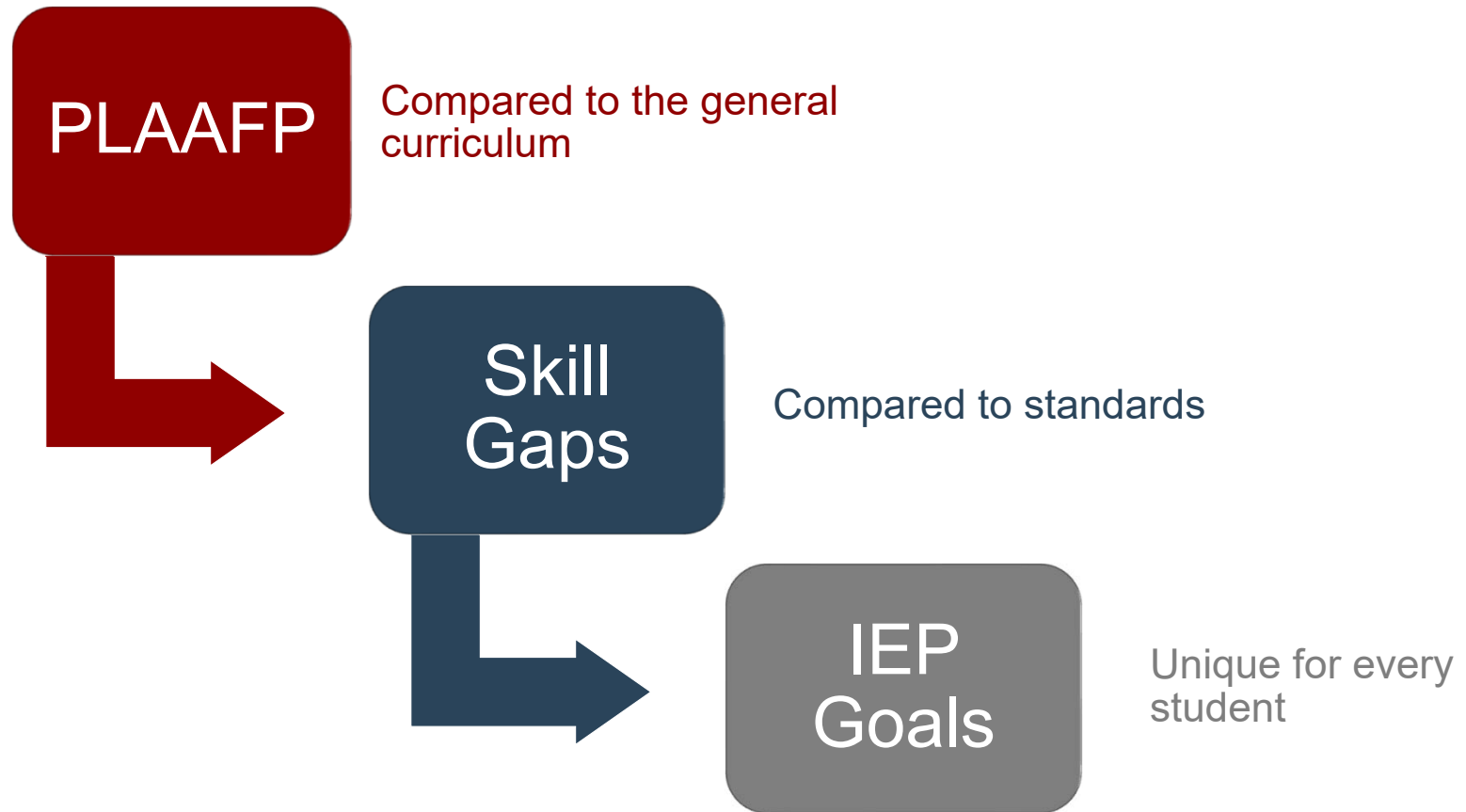
## ACROSS ENVIRONMENTS

How does the student perform throughout the school day?

## THE GENERAL CURRICULUM

How does the student's disability affect his/her involvement in the general curriculum?



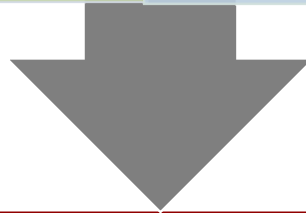


# Goals are linked to skill gaps.

Annual measurable goals must be:

Based on the unique needs of a student.

Designed to help the student be successful in the general curriculum.



*34 C.F.R. §300.320(a).*



**RIGOROUS BUT REASONABLE!**

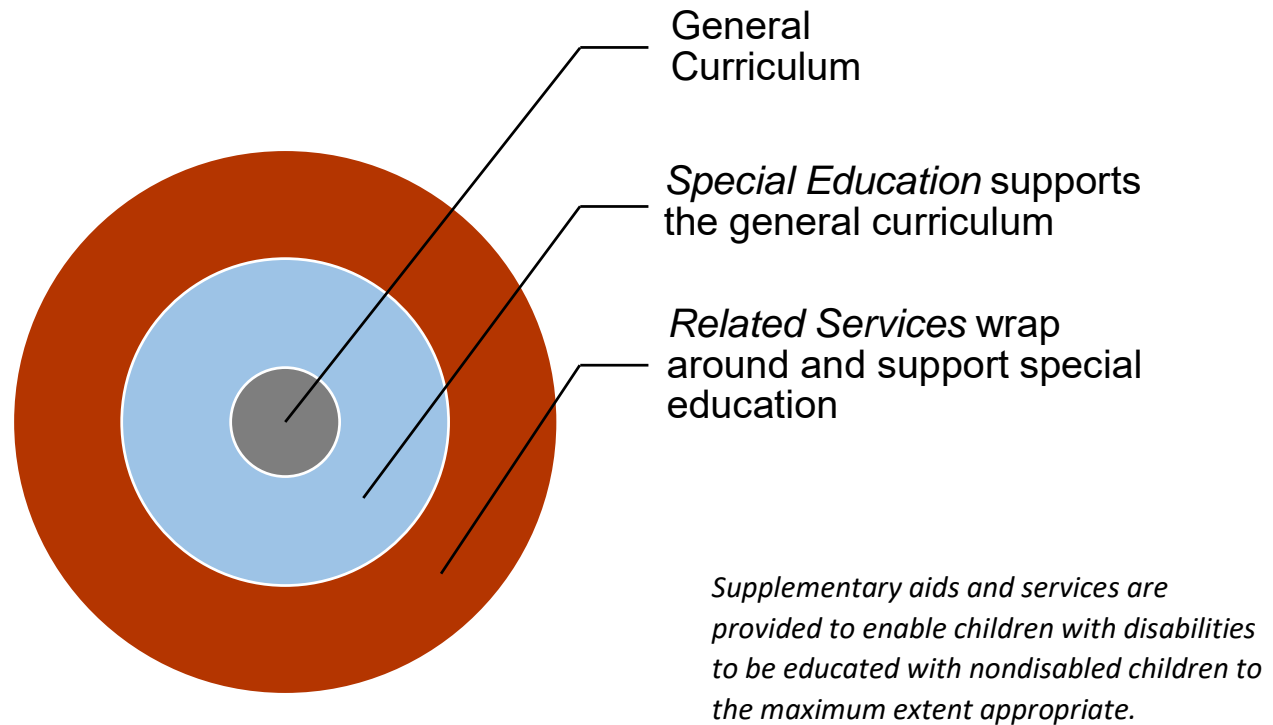


# Design and provide services

**TO HELP STUDENTS MEET IEP GOALS!**



# SERVICES



Once determined by the  
team,

**SERVICES MUST BE PROVIDED IN ACCORDANCE WITH THE IEP!**



# LEAST RESTRICTIVE ENVIRONMENT

The 3 maximums!



## EDUCATED WITH NONDISABLED

To the maximum extent appropriate, students with disabilities are educated with nondisabled children.  
*34 C.F.R. §300.114.*

## EXTRACURRICULARS

To the maximum extent appropriate to the needs of that student, ensure the student participates with nondisabled children in extracurricular activities.  
*34 C.F.R. §300.117.*

## SUPPLEMENTARY AIDS & SERVICES

To the maximum extent appropriate, supplementary aids and services are provided to educate students with nondisabled peers.  
*34 C.F.R. §300.42.*



# LEAST RESTRICTIVE ENVIRONMENT





# How will you know if its working?

## Progress monitoring.

- **Data.** Collect and share data at a high frequency.
- Monitor **progress** toward IEP goals and **progress** in the general curriculum.
- Stay vigilant and communicate with parents.





# What is a reasonable amount of progress?

**The team already determined a reasonable progress amount.**

**Link to the measurable goals.**

- ***Rigorous.*** Challenging. Targeted. Unique.
- ***Reasonable.*** *How much of the skill gap can we expect to close?*





LACK OF  
PROGRESS

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# What happens if no progress occurs?

## The 4 Rs:

- **Who?** The team.
- **When?** A reasonable amount of time.
- **Why?** If the IEP is not recalibrated, a denial of FAPE will result.





UNEXPECTED  
PROGRESS

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# What happens if unexpected progress occurs?

## The 4 Rs:

- **Who?** The team.
- **When?** A reasonable amount of time.
- **Why?** If the IEP is not recalibrated, a denial of FAPE will result.



If educational needs  
change, it is time to realign the IEP to  
address new educational needs in order to provide  
access and an opportunity to progress in the general  
curriculum.



**RECONVENE  
REVIEW  
RESTRATEGIZE  
REVISE**



# RECONVENE

## Get the IEP team together!

- **Virtually, telephonically, or at the same table.**
  - Elicit and gather information regarding the student.
  - Ask what additional information is needed to fully understand the student's current educational needs.
  - Develop a plan to gather information or conduct assessments.
  - Set a time to review the new information.



Evaluation

Present  
Levels &  
Needs

Measurable  
Goals

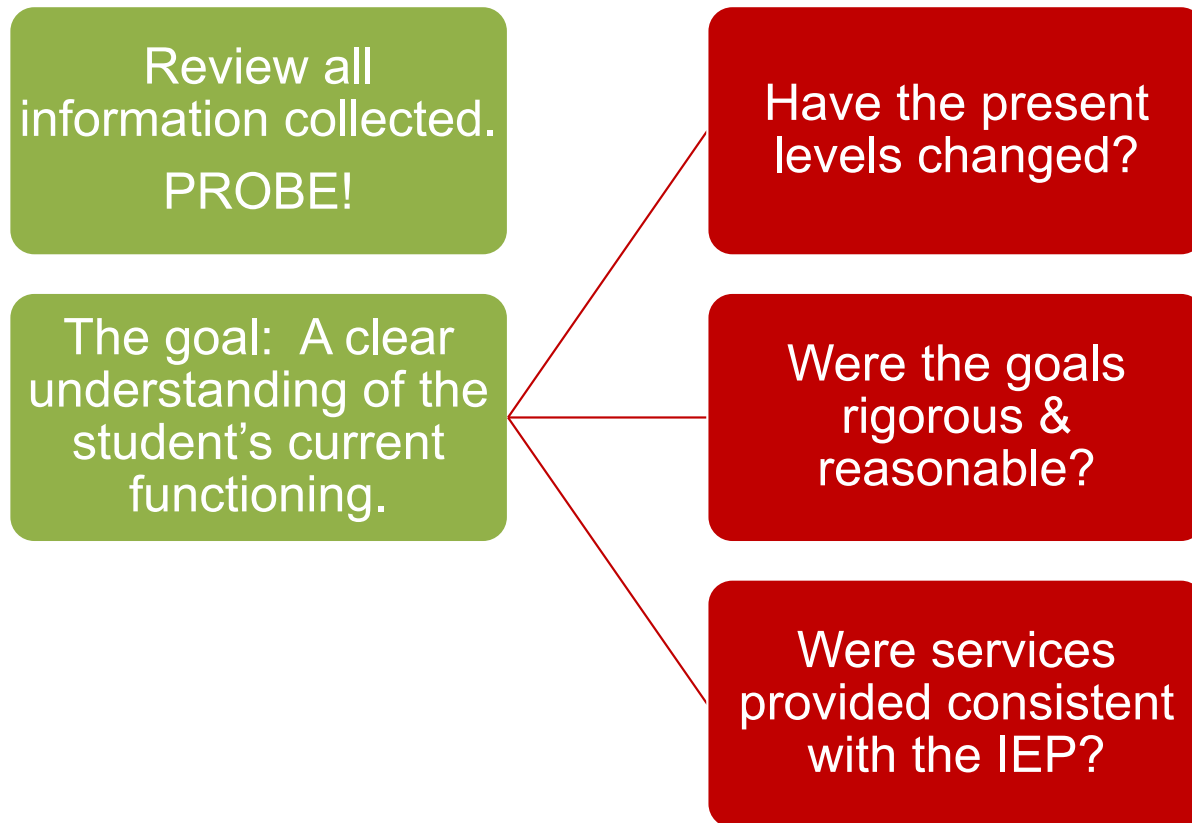
Self-  
Supports

**FIND THE BROKEN  
LINK!**

Re-  
Environment

ca-  
Benefit

# REVIEW





# RESTRATEGIZE

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- **What services and supports does the student need to meet the goals?**
- **34 C.F.R. §300.320(a)(4)**
  - A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—



# RESTRATEGIZE

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- **34 C.F.R. §300.320(a)(4)**
  - To advance appropriately toward attaining the annual goals;
  - To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; AND
  - To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.



- Ask what is the least restrictive environment where the student can be successful.
- Understand the difference between placement and location.

A row of pencils is shown against a dark, textured background. Most of the pencils are dark grey or black. One pencil, located towards the left side of the row, is bright yellow and stands out significantly from the others. The word "RESTRATEGIZE" is written in large, white, sans-serif capital letters across the middle of the image, partially overlapping the pencils.

RESTRATEGIZE

# REVISE

- Now, revise the IEP to meet the student's current needs.
- Annual IEP or an amendment.
- Provide services and supports in conformity with the IEP.
- Keep and report frequent progress data.
- If the student is NOT receiving the anticipated educational benefit, or if the student makes UNANTICIPATED progress, GO BACK TO THE 4 Rs.







# Thank You

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