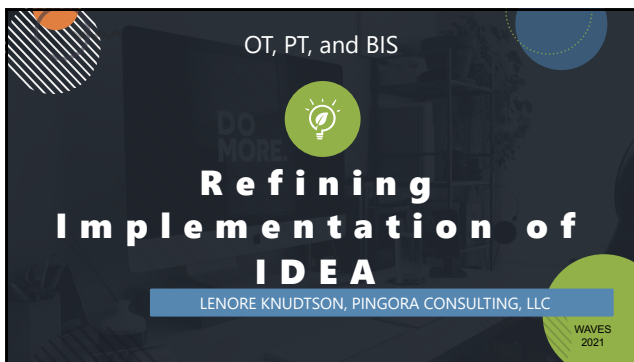


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3

TODAY'S TOPICS

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

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Teamwork

Brilliant!

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

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Mandatory Team Members

- Parents are always invited.
- Mandatory members include:
 - Not less than one regular education teacher of the child;
 - Not less than one special education teacher of the child;
 - A representative of the public agency who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the public agency.
 - An individual who can interpret the instructional implications of evaluation results.

34 C.F.R. §300.321.

6

Mandatory Team Members

- In most cases, related service providers are NOT mandatory team members.
- Beyond the mandatory membership, districts have authority to allocate resources for team meetings.



7

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



DON'T

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



DON'T

DON'T make unilateral changes to IEP services.



DON'T

DON'T underestimate the importance of PWN.



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9

FAPE is still FAPE

- Neither Congress or the USDE have authorized a departure from the long-established FAPE standards during the pandemic.
- IEP teams must go through the same steps to propose an IEP based on a student's unique educational needs.



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Secretary of Education Report to Congress

April 27, 2020

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



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Letter to Special Education and Early Intervention Partners,

August 24, 2021

OSERS made clear that, for the 2020-2021 school year, no IDEA requirements were waived.



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Letter to
Special
Education
and Early
Intervention
Partners,
August 24, 2021

OSERS further clarified that, no matter what primary instructional delivery approach was chosen for that year, SEAs and LEAs remained responsible for ensuring that FAPE was available to all children with disabilities.

13

The FAPE Standard

"But [the student's] 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."

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

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**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.

15

More points of alignment.

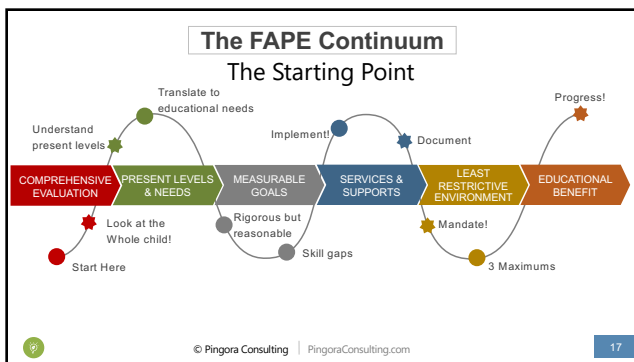
The IEP must include a statement of how the child's disability affects the child's **involvement and progress in the general curriculum.** ³⁴ C.F.R. §300.320(a).

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).

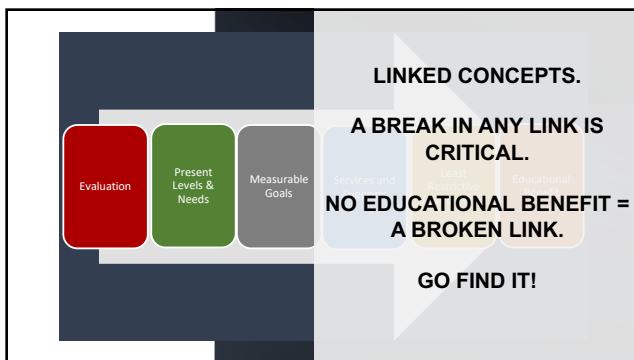
The clear implication is that there is an **education curriculum that is applicable to all children** and that this curriculum is based on the state's academic content standards. ⁷¹ Federal Register 46519.

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It starts with a comprehensive evaluation.

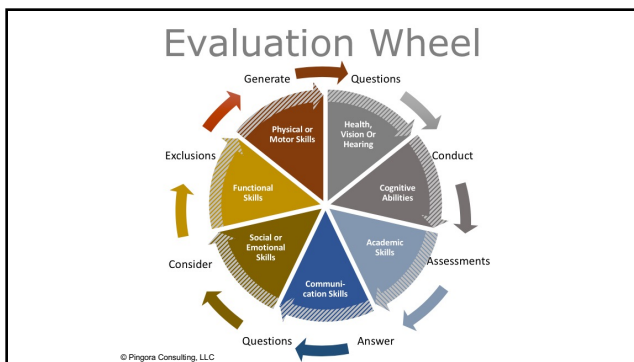
An evaluation under the IDEA serves two purposes:

- 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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IDEA Eligibility

Comprehensive Evaluation

=

IDEA Disability

and

Educational Needs

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No educational need?

If the disability does not adversely affect educational performance, the student is NOT eligible under IDEA. 34 C.F.R. §300.8.

If the child does not need special education, or specially designed instruction, the child is NOT eligible under IDEA. 34 C.F.R. §300.8.

If the student only needs a related service and NOT specially designed instruction, the student is NOT eligible under IDEA. 34 C.F.R. §300.8.



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PRESENT LEVELS

More than just test scores!



01

ACADEMIC AND FUNCTIONAL

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

02

ACROSS ENVIRONMENTS

How does the student perform throughout the school day?

03

THE GENERAL CURRICULUM

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



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PLAAFP

Compared to the general curriculum

Skill Gaps

Compared to standards

IEP Goals

Unique for every student



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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!

25

What about behavior?



If a skill gap is behavior that interferes with learning, the team must address behavior in the IEP.



Use behavioral goals or behavior intervention plans to improve a student's behavior and help close that skill gap.



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Goals for Related Services?



The IDEA does not require goals to be written for each specific discipline. 71 Fed. Reg. 46662.



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next

Design and provide services

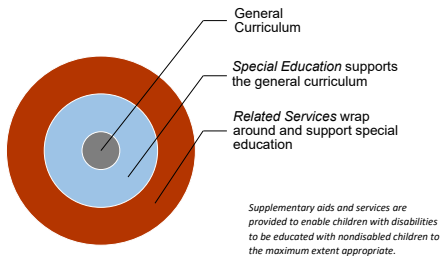
TO HELP STUDENTS MEET IEP GOALS!



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SERVICES



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Once determined by the team,

SERVICES MUST BE PROVIDED IN ACCORDANCE WITH THE IEP!



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No Freestyling!

FAPE means special education and related services provided in conformity with an IEP. ³⁴ C.F.R. §300.17.

No single team member or provider is free to make unilateral changes to the amount, frequency, or type of special education service.



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Keep Provider Logs!



In the event of a challenge, you must be able to verify services were provided in conformity with the IEP.



Service provider logs are the most straightforward way to document services from an itinerant provider.



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Educational Benefit

It's all about progress.



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LEAST RESTRICTIVE ENVIRONMENT

The 3 maximums!




- 01 EDUCATED WITH NONDISABLED**
To the maximum extent appropriate, students with disabilities are educated with nondisabled children. *34 C.F.R. §300.114.*
- 02 EXTRACURRICULARS**
To the maximum extent appropriate, ensure participation with nondisabled children in extracurricular activities. *34 C.F.R. §300.117.*
- 03 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.*

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LEAST RESTRICTIVE ENVIRONMENT




The flowchart illustrates the hierarchy of the Least Restrictive Environment (LRE) options. It starts with 'To the MAXIMUM EXTENT APPROPRIATE' (Regular Classroom) and moves through 'ONLY IF regular classes with SUPPLEMENTARY AIDS & SERVICES cannot be achieved' (Special Classes), 'ONLY IF no lesser restrictive option will work' (Separate Schools), 'ONLY IF no lesser restrictive option will work' (Residential Settings), and finally 'ONLY IF education with NO PEERS is the ONLY OPTION' (Hospital or Homebound). Each option is represented by a colored box with an icon below it: a schoolhouse for Regular Classroom, a bus for Special Classes, a house for Separate Schools, a house with a car for Residential Settings, and a hospital for Hospital or Homebound.

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WHY KEEP THE TEAM'S FOCUS ON EDUCATIONAL BENEFIT?

It is the law!



- 01 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.
- 02 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.
- 03 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.

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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.



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What is a reasonable amount of progress?

The team already determined a reasonable progress amount.

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



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**LACK OF
PROGRESS**



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What happens if a student makes no/little progress?

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.



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RECONVENE
REVIEW
RESTRATEGIZE
REVISE



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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.



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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.



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RECONVENE
REVIEW
RESTRATEGIZE
REVISE



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RECONVENE

Get the IEP team together!

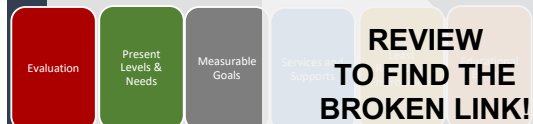
- Virtually, telephonically, or at the same table.
- Ask what additional information is needed to fully understand the student's current educational needs.
- Develop a plan to gather information or conduct assessments.
- Set a time to review the new information.



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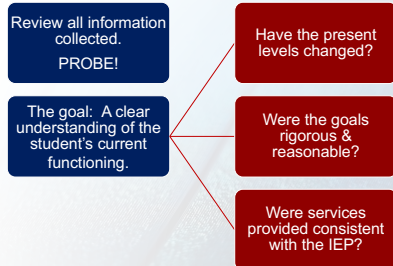
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REVIEW



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RESTRATEGIZE

- 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—



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RESTRATEGIZE

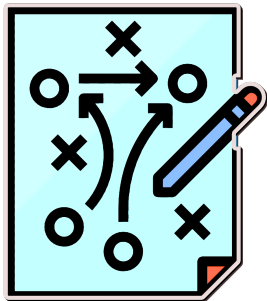
- 34 C.F.R. §300.320(a)(4)
 - To advance appropriately toward attaining the annual goals;
 - To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; AND
 - To be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



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RESTRATEGIZE

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

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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.
 - ✓ Collect 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.



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WHY ARE THESE STEPS IMPORTANT?

Because we work on behalf of children.
If that doesn't convince you, maybe this will. . .



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**REMEMBER, IT IS THE
TEAM'S
RESPONSIBILITY TO
FIND THE BROKEN
LINK!**

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Hood River County Sch. Dist. v. Student,
79 IDELR 40 (D. Oregon 2021).

- An Oregon district's failure to credibly explain why it waited nearly two years to evaluate a child was responsible for a substantial compensatory education award. Concluding that the district violated the IDEA's child find mandate and denied the child FAPE, the Court ordered the district to provide the child 900 hours of compensatory education.
- After reviewing a private October 2016 evaluation report that included a diagnosis of autism, the district advised the parents to postpone an IDEA evaluation until the child entered kindergarten.
- Under the law, a district must evaluate a child it suspects has a disability that necessitates special education services. This district had long standing concerns regarding sensory processing and communication and had served the student on an IFSP.



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D.C. v. Klein Indep. Sch. Dist.,
79 IDELR 4 (5th Cir. 2021).

- A Texas district unreasonably delayed evaluating an elementary school student who struggled with reading comprehension and failed to develop an adequate IEP for the student.
- If a student has a 504 plan addressing an academic deficit but fails to progress for several months despite accommodations, that's a signal the child may need specialized instruction. Unlike this district, which waited several months after it knew the child's reading comprehension wasn't improving, districts in such situations should move quickly to evaluate, or, if they determine an evaluation is unnecessary, fully document their reasoning in a procedural safeguards notice to the parents.
- The delay was unreasonable and denied the student FAPE.



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McLaughlan v. Torrance Unified Sch. Dist.,
79 IDELR 75 (C.D. Cal. 2021).

- It may sometimes be difficult to develop an appropriate educational program for a student, especially if he requires intensive services to address his deficits and behaviors.
- In those circumstances, the district should promptly modify the IEP if it's clear that the program isn't meeting the student's needs.
- Because this student became easily overstimulated in group settings, he could not tolerate the 314 minutes per day of group instruction required by his IEP.
- To ensure the student received FAPE, the district should have immediately considered whether a 1:1 setting was appropriate and properly revised the IEP to reflect his new placement.



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Montgomery County Intermediate Unit No. 23 v. K.S.,
79 IDELR 5 (E.D. Pa. 2021).

- An intermediate educational unit had to reimburse the parents of a 3-year-old boy with autism for the tuition and transportation costs they incurred when they placed their son in a general education preschool.
- Local educational agencies should not interpret their state's lack of a universal preschool program to mean they never have to fund general education preschool placements for children with disabilities.
- If a child needs such a placement to receive FAPE, the LEA may have to provide it at no cost to the parents.
- In this case, the IEU argued that it did not have to pay for a general education preschool placement unless the state made preschool-level instruction available to all children. Its misinterpretation of the IDEA and the state's special education code resulted in months of costly litigation.



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Preciado v. Bd. Of Educ. Of Clovis Mun. Schs.,
76 IDELR 67 (D.N.M. 2020).

- A New Mexico district denied FAPE to an elementary school student with a specific learning disability not only by developing inadequate IEPs, but also by failing to ensure she received appropriate instruction in reading and writing.
- If an IEP team has information suggesting that a student with a disability is not progressing as anticipated, it should consider the need for different or additional services.
- A district that continues a student's current level of services despite her lack of progress may very well find itself defending a FAPE claim. Although the student in this case repeatedly failed to meet her reading and writing goals, her IEP team offered substantially the same program for three years in a row.



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Preciado v. Bd. Of Educ. Of Clovis Mun. Schs.,
76 IDELR 67 (D.N.M. 2020).

- Not only did the student's third-, fourth-, and fifth-grade IEPs have "extremely similar goals and recommendations," but the evidence showed that she did not receive adequate instruction in reading and writing.
- The judge attributed some of the student's struggles to her special education teacher's lack of familiarity with the Orton-Gillingham approach to reading instruction. "[The teacher] believed that simple repetition of words taught a student how to read," the magistrate judge wrote, noting that the teacher conflated memorization with decoding.



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

- A Pennsylvania district denied FAPE to a student with autism and a speech language impairment from February 2017 to the end of the school year, and during the 2018-19 school year by failing to address the student's lack of progress and by failing to timely conduct needed evaluations.
- When an IEP team repeats goals from one IEP to another, that's a red flag that the student may not be progressing appropriately.
- For each goal that is repeated, the IEP team should consider whether the student requires additional or different services to improve. Otherwise, a court may find, as occurred here, that the IEP wasn't designed to enable the student to make progress. This team should have either changed the five goals it repeated; adjusted the student's programming to reverse his stagnation, or both.



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

- A Maryland district denied FAPE to an elementary school student with autism and other disabilities not only by failing to conduct a functional behavioral assessment in a timely manner, but also by developing an IEP that failed to address her interfering behaviors.
- Regardless of whether a district conducts an FBA of an IDEA-eligible student, it must ensure that the student's behavioral intervention plan or IEP adequately addresses her behaviors.
- A district that offers inadequate or ineffective behavioral interventions significantly increases its chances of being found liable for a denial of FAPE. Not only did the district in this case wait six months to conduct an FBA, but the interventions it eventually offered had no meaningful impact on the child's behavior.



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Minnetonka Pub. Schs., Indep. Sch. Dist. No. 276,
78 IDELR 94 (D. Min. 2021).

- Regardless of how a district classifies an IDEA-eligible student's disabilities, it must ensure that it identifies and addresses all of the student's disability-related needs.
- This means the district must evaluate the student in all suspected areas of disability, develop appropriate goals, and revise the IEP as needed to address the student's lack of progress.
- Although this student's evaluations revealed his ongoing struggles with reading, the district repeatedly developed IEPs that focused primarily on the student's needs as a child with autism.



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Minnetonka Pub. Schs., Indep. Sch. Dist. No. 276,
78 IDELR 94 (D. Min. 2021).

- That oversight, along with the repetition of the student's annual goals, showed the student was not making adequate progress.
- The court ordered the district to reimburse the parents for the student's private reading program and the cost of an independent educational evaluation.



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**Thank
You**

LenoreK@PingoraConsulting.com

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