

# **FAPE: PART II**

Wyoming Department of Education  
WAVES Conference

**2022**

# About Us

**Pingora Consulting, LLC**

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**We help educators  
improve outcomes for  
students.**



# 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 of behalf of students.

- **Lean in!**
- **Challenge yourself!**



Appropriately ambitious



Unique Circumstances



# Educational Benefit



Reasonably calculated



Progress

“

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

*Andrew F. v. Douglas County Sch. Dist.  
RE-1, 69 IDELR 174 (2017).*



**FAPE**



# FAPE according to *Endrew F.*

69 IDELR 174 (2017).

- Every child should have the chance to meet challenging objectives.
- The IDEA demands an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.
- An educational program must be appropriately ambitious in light of his circumstances.



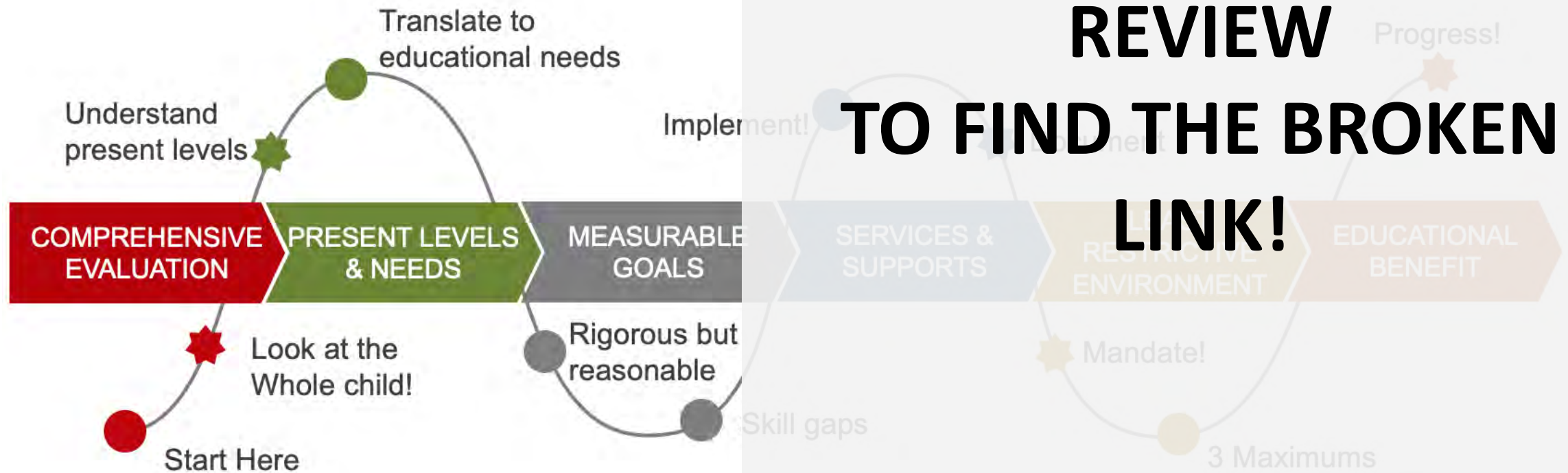
The image features a background of radiating lines in shades of beige and cream, creating a sunburst effect. In the center, there is a dark blue rectangular box with rounded corners. Inside this box, the word "Review" is written in a large, bold, gold-colored font with a slight shadow. Below it, the text "Check the FAPE Continuum" is written in a smaller, white, sans-serif font.

# Review

Check the FAPE Continuum

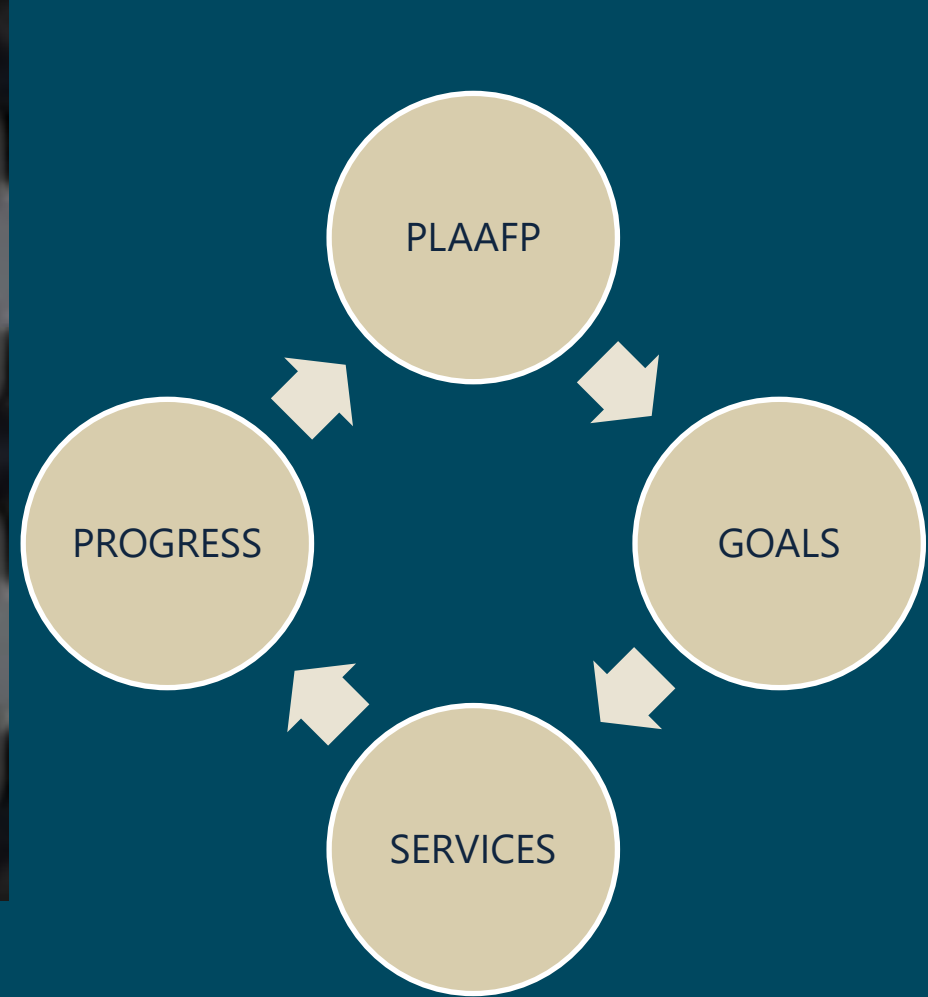
# The Starting Point:

## FAPE Continuum





# Educational Benefit



# EDUCATIONAL BENEFIT

## Understand Individualized IEPs

The Supreme Court established the following two-part test that courts should use to decide the appropriateness of a student's education:

- Has the state complied with the procedures set forth in the IDEA?
- Is the IEP, developed through the IDEA's procedures, reasonably calculated to enable the child to receive educational benefits?

*Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982).



# IS THERE BENEFIT?

Did the team hit the target?

# 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.

# Monitoring Progress

The IEP needs to include a statement regarding when progress on IEP goals is reported to parents.



Progress updates for the goals and objectives should be sent to the parent at the frequency described within the IEP (Progress Reports).



Selecting the proper tool to measure results of instruction is essential.

# Selecting appropriate monitoring tools is **IMPORTANT.**

- Avoid broad and global assessment.
- Not sensitive to small incremental changes.
- Examples WY-TOPP, MAP, WJ-IV, STAR, others?



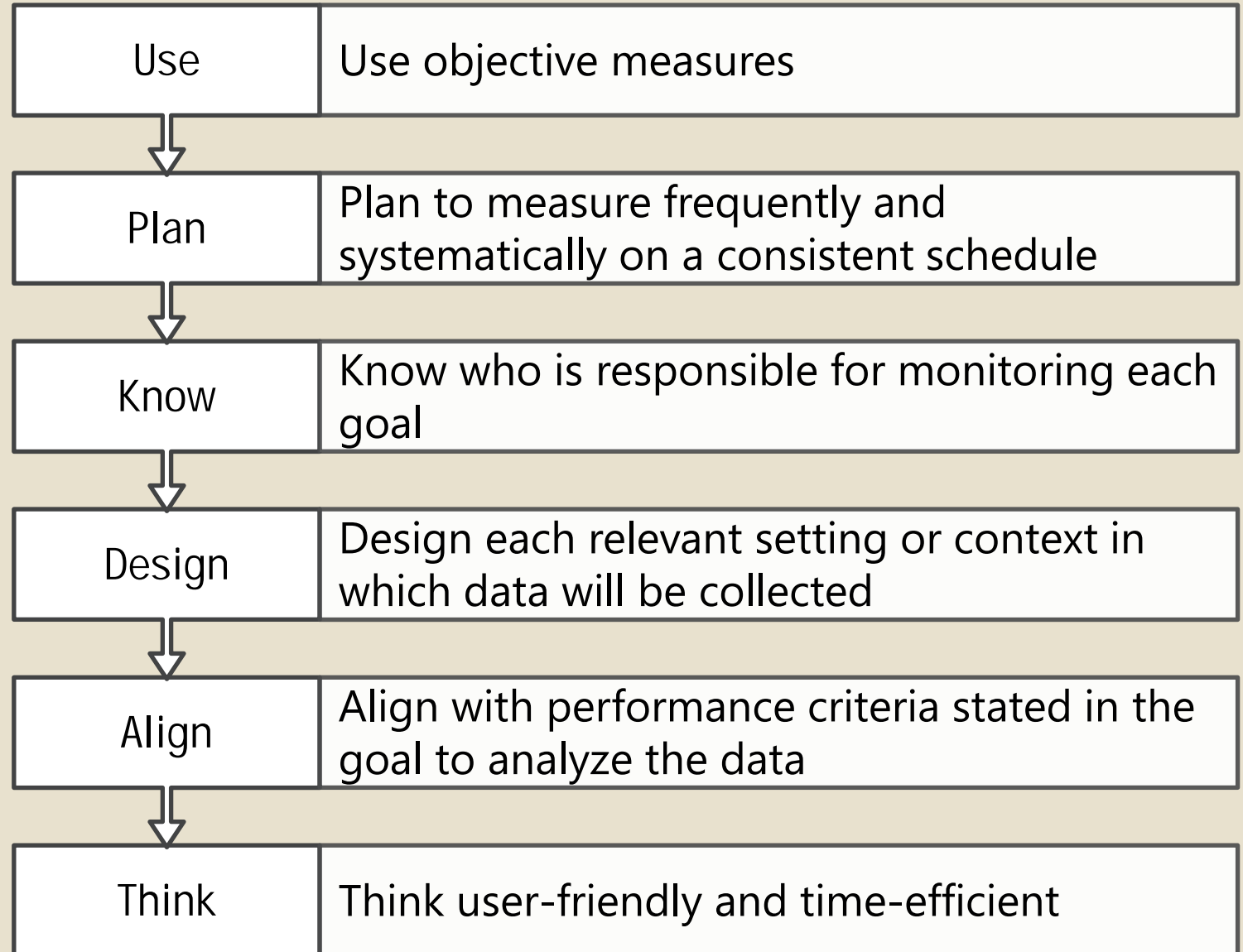




# A KEY to progress monitoring plans...

The most appropriate progress monitoring systems are those in which objective numerical data are collected frequently, graphed, analyzed, and then used to make instructional decisions.

# Simple tips for selecting measuring tools.



Monitoring the student's progress to determine if the student is making progress in light of their unique circumstances toward goals as well as receiving FAPE.



Schools are obligated to adjust the IEP if the student is not making progress.

How do you know if the IEP needs to be adjusted if not monitoring?

If not monitoring systematically, how do you know WHAT needs to be adjusted if the student is not making progress?



Progress Monitoring is used to

Determine student's current performance

Evaluate the effectiveness of instruction

Adjust the instructional program as needed

# Pitfalls

Recent decisions concerning progress monitoring have revealed five primary areas of concern:

1. The IEP team fails to develop or implement progress monitoring plans;
2. Responsibilities for progress monitoring are improperly delegated;

# Pitfalls

3. The IEP team does not plan or implement progress monitoring for behavior intervention plans (BIPs);
4. The team uses inappropriate measures to determine student progress toward graduation;
5. Progress monitoring is not frequent enough to meet the requirements of IDEA or to provide meaningful data to IEP teams.



# WHAT NEXT?

HOW DO IEP TEAMS RESPOND?





# LACK OF PROGRESS

# UNEXPECTED PROGRESS



01 Reconvene

02 Review

03 Restategize

04 Revise

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.

# **CHANGE**

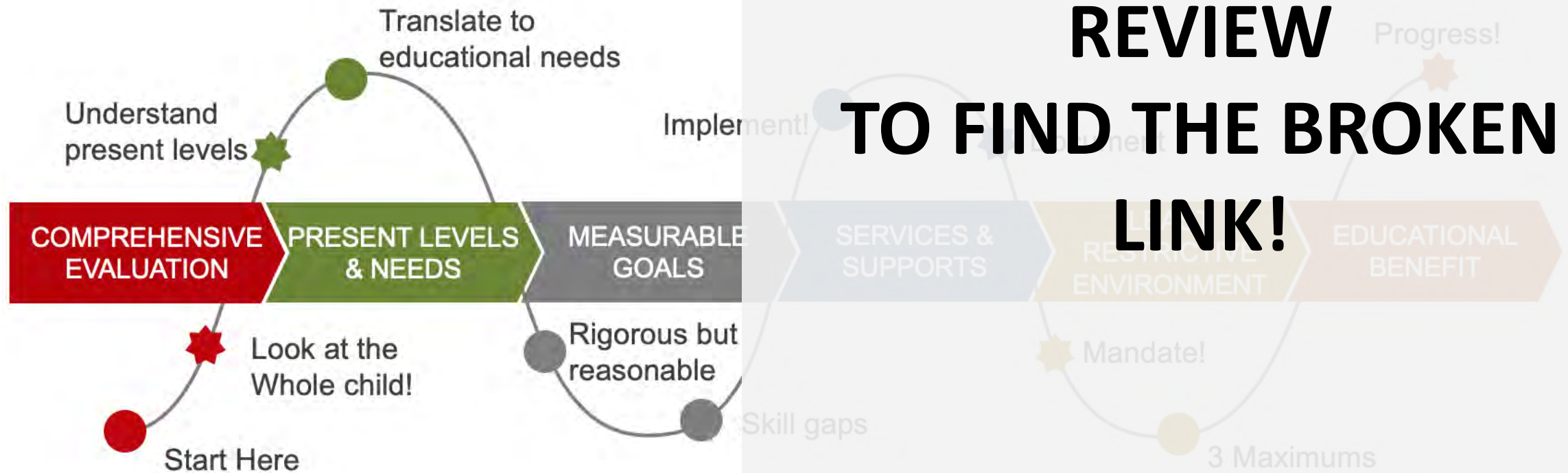
# RECONVENE

## 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.

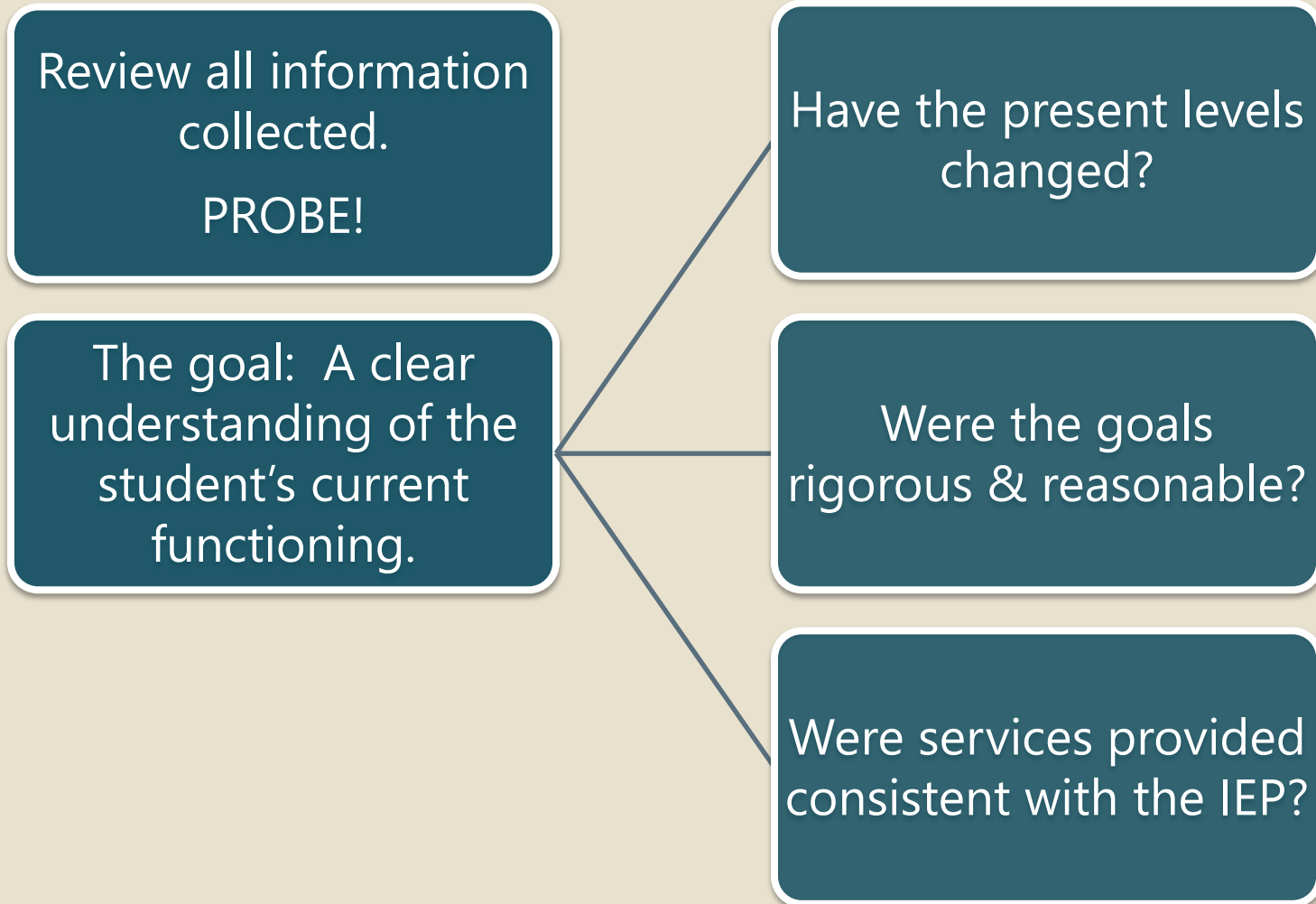
# The Starting Point:

## FAPE Continuum





# REVIEW



# 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—

# 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.

# RESTRATEGIZE

Ask what is the least restrictive environment where the student can be successful.

Understand the difference between placement and location.

# 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 anticipated educational benefit or if the student makes UNANTICIPATED progress, GO BACK TO THE 4 Rs.

The background features a sunburst pattern of radiating lines in shades of beige and tan. A white rectangular box with a dark blue border is centered in the upper half of the image. Inside the box, the text "WHY ARE THESE STEPS IMPORTANT?" is written in a bold, blue, sans-serif font with a yellow drop shadow.

# WHY ARE THESE STEPS IMPORTANT?

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

# *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.



# *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.

# *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.

# *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.

# *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.

# *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.

# *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.

# *Doe v. Huntsville City Schs. Bd. Of Educ.,*

78 IDELR 94 (D. Min. 2021).

- The parent of an 8-year-old student with Asperger syndrome and Charcot-Marie-Tooth syndrome established a viable claim that a district and several educators violated her son's 14th Amendment substantive due process rights by failing to intervene in the peer bullying the student allegedly experienced at school.
- Districts should ensure their staff know that having a bullying victim with a disability meet with the individual who is bullying him is nearly always an improper response.
- Proper training could have prevented this assistant principal from having the child, who had sustained permanent physical injuries, meet with the bully, who used the opportunity to assert even more power over the victim.





Go back to the FAPE continuum and find the broken link.

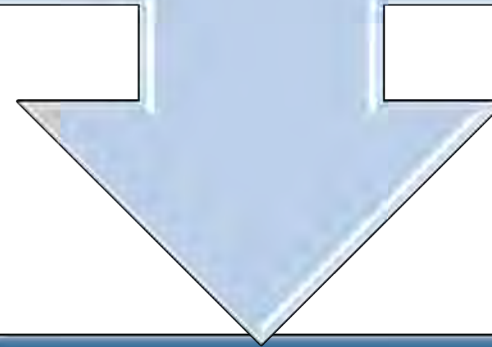
Answer new evaluative questions.

Refine PLAAFP to reflect current needs.

Revise goals to align with current needs.

Adjust services to align with needs.

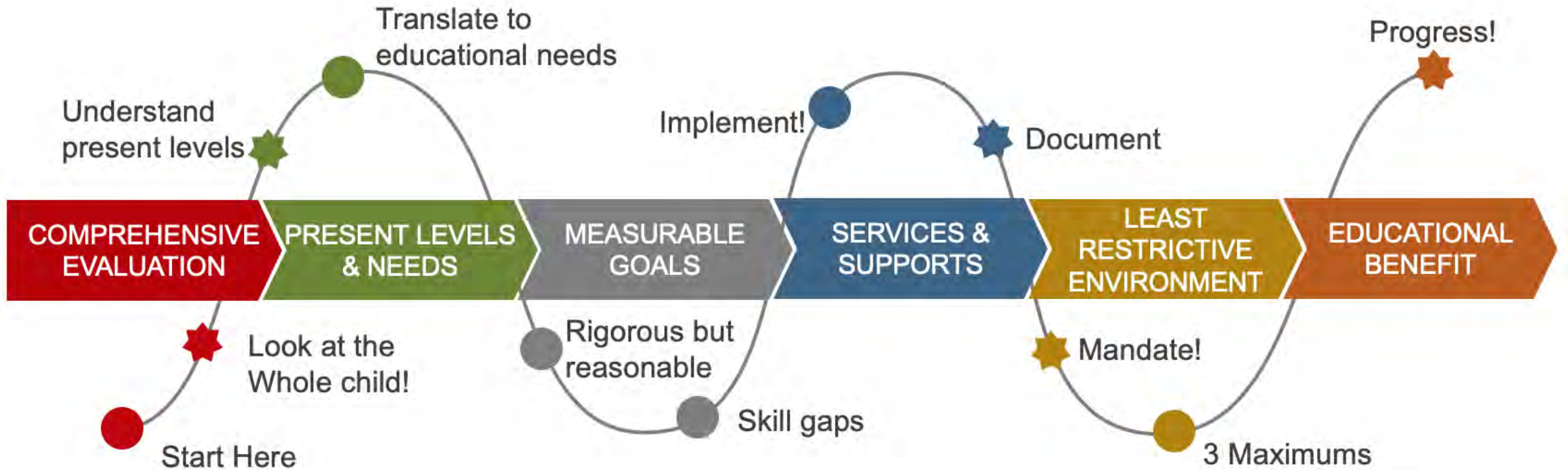
Scrutinize the environment. Is it the right one?



**FAILING TO RESPOND TO A LACK OF PROGRESS IS A FAPE VIOLATION!**

# FIND THE BROKEN LINK

## FAPE Continuum





**RECONVENE**

# Remember



**REVIEW**



**RESTRATEGIZE**



**REVISE**

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# THANK YOU

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