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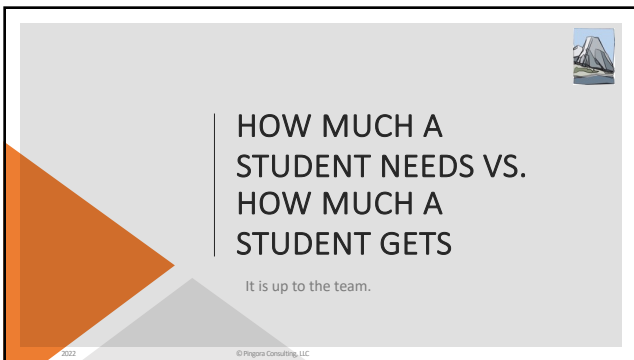
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In this session . . .

- 01 Introduction** Service vs. schedules.
- 02 Educational Needs** A clear understanding of educational needs.
- 03 Goals** Goals are designed to close learning gaps.
- 04 Specially Designed Instruction** How much SDI is needed?
- 05 Schedules** Schedules **DO NOT** control SDI.

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01

**INTRODUCTION**  
What is special education?

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Since 1975 in the EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, Special Education has been defined as –

**SPECIALLY DESIGNED INSTRUCTION**

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“  
Special education is a **place**  
where **in**struction occurs.”



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“  
The **amount** or type of  
specially designed instruction  
is **not** on **schedules**.”



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“  
The **amount** of specially  
designed instruction can be  
changed by a **teacher**.”



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### Team Decision-making

IEPs are developed by teams.

IEPs are review/revised annually by teams.

IEPs are amended by teams or with the parent.

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### Need-Based

ALL IEP decisions are based on educational need.

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IEP decisions are not driven by:

Cost

Location

Preference

Schedules

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02

## EDUCATIONAL NEEDS

How are they identified?

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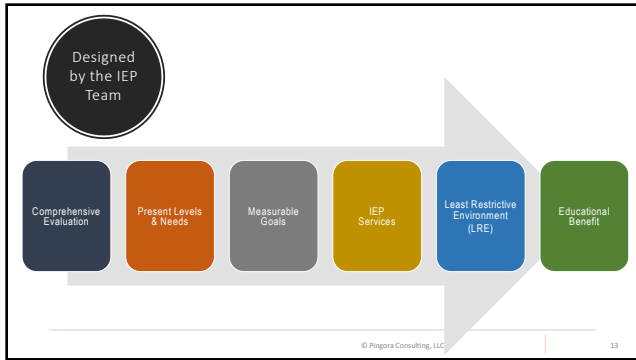
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It starts with a comprehensive evaluation.

- 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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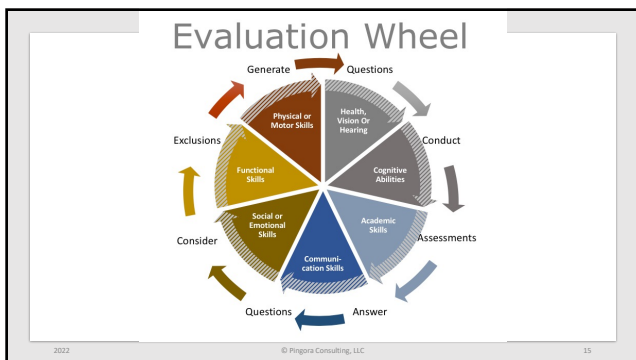
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Evaluate to determine PLAAFP.

- Each IEP must contain: "A statement of the child's present levels of academic achievement and functional performance, including --
- How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
- For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

34 C.F.R. §300.320(a).

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“

Each IEP team must consider the child's **present levels** of performance and any information provided by the **parents**.

*Questions and Answers on Andrew F. v. Douglas County School District, Re-1, 71 IDELR 68 (EDU 2017).*

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PLAAFP = NEEDS

- The IEP should express the **PLAAFP** in specific, objectively measurable terms.
- While the use of test scores is not always appropriate, test scores accompanied by some individual analysis is common.

*O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233, 28 IDELR 177 (10th Cir. 1998).*

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### PLAAFP = Needs

The statement of **PLAAFP** should be individualized and reflect the student's unique abilities.

*Letter to New, 211 IDELR 464 (OSEP 1987).*

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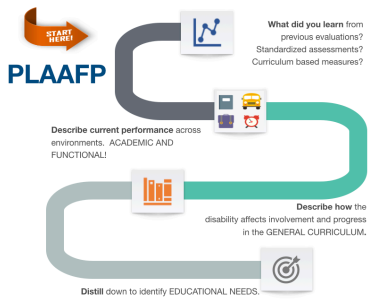
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Once you understand educational needs . . .

The team can identify skill gaps.

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03

## GOALS

Designed to close skill gaps.

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Goals address areas of need.

- An IEP must include a statement of measurable annual goals, including **academic and functional** goals designed to:
  - Meet the child's **needs** that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; AND
  - Meet each of the child's other educational **needs** that result from the child's disability.

34 C.F.R. §300.320(a).

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### Measurable Goals

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    graph TD
      PLAAFP[PLAAFP] --> SkillGaps[Skill Gaps]
      SkillGaps --> IEPGoals[IEP Goals]
  
```

- PLAAFP**
  - Compared to general curriculum
- Skill Gaps**
  - Compared to state standards
- IEP Goals**
  - Unique for each Student

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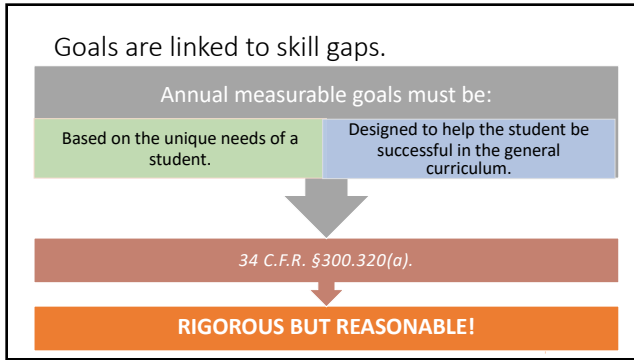
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Goals must be individualized based on need.

The court held that the district's use of "stock" goals and services amounted to a denial of FAPE.

No IEP is perfect and that sometimes the paperwork does not reflect the actual services provided to a student and the time and effort of teachers.

But, the IDEA requires IEPs to include a reasonably accurate assessment of students' needs and meaningful goals.

*Jefferson County Bd. of Educ. v. Lolita S., 62 IDELR 2 (N.D. Ala. 2013).*

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04

**SPECIALLY DESIGNED INSTRUCTION**

It is a team decision.

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34 C.F.R. §300.39(a)

- *Special education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—
  - (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
  - (ii) Instruction in physical education.



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34 C.F.R. §300.39(b)

- *Specially designed instruction* means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—
  - (i) To address the unique needs of the child that result from the child's disability; and
  - (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.



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What is the general curriculum?

**It is the same curriculum as for nondisabled children.**

34 C.F.R. §300.320(a)(1)(i).

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What is the general curriculum?

- The Department interprets “the same curriculum as for nondisabled children” to be the curriculum that is based on a State’s academic content standards for the grade in which a child is enrolled.
- Based on the interpretation of “general education curriculum” set forth in this letter, **we expect annual IEP goals to be aligned with State academic content standards for the grade in which a child is enrolled.**

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What is the general curriculum?

- The standards must be clearly related to grade-level content, although they may be restricted in scope or complexity or take the form of **introductory or pre-requisite skills.**
- In a situation where a child is performing significantly below the level of the grade in which the child is enrolled, an IEP Team should determine annual goals that are ambitious but achievable. In other words, the annual goals need not necessarily result in the child’s reaching grade-level within the year covered by the IEP, but the goals should be **sufficiently ambitious** to help close the gap.

*Dear Colleague Letter, 66 IDELR 227 (OSERS 2015).*

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SERVICES

- General Curriculum
- Special Education supports the general curriculum
- Related Services wrap around and support special education

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SDI is based on student need.

- It starts with the team!
- Identification of needs requires a comprehensive evaluation and ongoing review of data.
- Evaluation and a review of functioning across environments leads to present levels of need.
- The team determines the amount, type, frequency, duration of SPECIALLY DESIGNED INSTRUCTION.

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- A statement of the anticipated frequency, location, and duration of related services that will be provided must be included in the IEP.
- OSEP advised that "it would be inconsistent with Federal requirements for States and school districts to have a practice of using ranges of time to express the agency's level of commitment to a particular special educational or related service since a child's IEP would not contain the specific amount of time committed for that service."
- Letter to Copenhagen, 21 IDELR 1183 (OSEP 1994).

Frequency, Duration, & Location

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### Appendix C to 34 C.F.R. Part 300 (1999)

- 51. Must the IEP specify the amount of services or may it simply list the services to be provided?**
- The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

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How much service?

- Both the amount and type of services that a district is required to provide will depend on the child's identified needs.
- An IEP is not defective merely because it fails to include special education services requested by the parents if those services are not necessary for the child to receive FAPE.
- *Winkelman v. Parma City Sch. Dist.*, 51 IDELR 92 (6th Cir. 2008), cert. denied, 109 LRP 38984, 129 S. Ct. 2862 (2009).

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Turn to the person on your left to answer this question.

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What if . . .

Your school provides differentiated instruction for all students? Is an IEP with SDI still needed?

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**YES!**

The LEA **must provide** a child with a disability **specialty designed instruction** that addresses the unique needs of the child that result from the child's disability, and ensures access by the child to the general curriculum, **even if that type of instruction is being provided to other children**, with or without disabilities, in the child's classroom, grade, or building.

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The fact that some of those services may also be considered *best teaching practices* or part of the district's regular education program does not preclude those services from meeting the definition of *special education* and being included in the child's IEP.

*Letter to Chambers, 59 IDELR 170 (OSEP 2012).*

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IEP services must be delivered.

- Services must be provided in conformity with the IEP. *34 C.F.R. §§300.17(d) and 300.323(c).*
- Because the IEP is developed based on a student's educational needs, any omission of service will be considered a procedural violation of the IEP.
- Procedural violations may rise to the level of a denial of FAPE.

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Treat the IEP like a contract.

- Courts treat it like one.
- Contracts cannot be changed by one party.
- Failure to deliver services in a contract is called a "breach."
- Breach of contract entitles the non-breaching party to a remedy.

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**DOCUMENT SERVICES!**

Verify!

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In the event of a challenge, provide verification:

- Provider logs
- Time in/time out logs
- 3<sup>rd</sup> party billing records

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05

**COMPLICATED BY SCHEDULES**

Building, Master, Block, etc.

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What are we talking about?

**EXAMPLE:** Student moves from middle school to high school, and the amount of time in SDI no longer fits with the high school schedule.

**EXAMPLE:** Student has a math goal with 30 minutes daily specially designed instruction in his IEP. Basic math is not offered second semester.

**EXAMPLE:** Student moves to a school with a block schedule. Her IEP provides daily SDI in reading, which is no longer offered every day.

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Either provide the specially designed instruction consistent with the IEP, OR

Amend the IEP to reflect the now current educational needs.

**SOLUTION - 2 choices:**

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The Four Rs

- Reconvene
- Review
- Restrategize
- Revise

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Two ways to amend a student's IEP:

- FULL TEAM, FULL MEETING**  
34 C.F.R. §300.324
- AMEND BY AGREEMENT**  
34 C.F.R. §300.324

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Amend by Agreement

- Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or by amending the IEP rather than by redrafting the entire IEP.
- After the annual IEP Team meeting for a school year, the parent and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the current IEP.

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Turn to the person on your right to explain your recommendation to the IEP team.

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What is your recommendation?

- Student moves from middle school to high school, and the amount of time in SDI no longer fits with the high school schedule.
- Student has a math goal with 30 minutes daily SDI. He made unexpected progress in the first 2 months, meeting the goal.
- Student made little progress toward language arts goal over the last 8 weeks.

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Remember . . .

- The IDEA does not guarantee any particular level of education and "cannot and does not" promise any particular educational outcome.
- IEPs must be reasonably calculated to provide appropriate educational benefit in light of a student's unique circumstance.

*Andrew F. v. Douglas County Sch. Dist. RE-1, 69 IDELR 174 (U.S. 2017) (citing Hendrick Hudson Cent. Sch. Dist. v. Rowley, 553 IDELR 656 (U.S. 1982)).*

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Remember . . .

- The *Andrew F.* standard addresses the amount of progress an IEP must be designed to enable a child to receive.
- It does not guarantee that a child will achieve a certain level of progress. Thus, the fact that a student is making slow progress under an IEP doesn't necessarily mean the program falls short of the *Andrew F.* standard.
- Although slow progress can be an indicator that the IEP is not reasonably calculated to produce meaningful progress, the question is whether the rate of progress is appropriate given the child's circumstances.

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In closing,

- SDI is a team decision!
- Amending the SDI is a team/parent decision!
- Changes to SDI MUST be based on educational need.
- Bring it back to the team!

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The amount, type, and frequency of SDI MUST BE PROVIDED consistent with the IEP.

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Stagnate progress or unexpected progress trigger IEP amendments.

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Ensure that the team understands the student's current educational needs.

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THANK YOU!



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