


**LRE Continuum:  
“Classroom & Beyond”**

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**What do these materials try to do?**



- Trace the foundation of “Curricular LRE” from EHA through NCLB & IDEA.
- Explore the practical impact of the doctrine on IEP decision-making and services.

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**Some IDEA History**  
*Daniel R.R. v. State Bd of Ed., 874 F.2d 1036, 1038 (5<sup>th</sup> Cir. 1989).*



- Prior to the IDEA, two equally ineffective approaches for students with disabilities:  
  
“they were excluded entirely from public education or were deposited in regular education classrooms with no assistance, left to fend for themselves in an environment inappropriate for their needs.”

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**Some IDEA History**  
*Bd. of Ed. of Hendrick Hudson CSD v. Rowley, 458 U.S. 176 (1982).*

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- *How do you know when FAPE is provided?*
  1. Congress was focused on getting students with disabilities into school.

“By passing the Act, Congress sought primarily to make public education available to handicapped children... the intent of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside.”

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**Some IDEA History**  
*Bd. of Ed. of Hendrick Hudson CSD v. Rowley, 458 U.S. 176 (1982).*

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2. “Maximize potential” & “equal benefit” were both rejected by the Supreme Court as standards.

Instead, “the basic floor of opportunity provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.”

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**Some IDEA History**  
*Bd. of Ed. of Hendrick Hudson CSD v. Rowley, 458 U.S. 176 (1982).*

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3. So does benefit mean the same thing for everyone? No.

“The Act requires participating States to educate a wide spectrum of handicapped children, from the marginally hearing-impaired to the profoundly retarded and palsied. It is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variations in between.”

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**Some IDEA History**  
*Bd. of Ed. of Hendrick Hudson CSD v. Rowley, 458 U.S. 176 (1982).*

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3. So does benefit mean the same thing for everyone? No.

“One child may have little difficulty competing successfully in an academic setting with nonhandicapped children while another child may encounter great difficulty in acquiring even the most basic of self-maintenance skills.”

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**Some IDEA History**  
*Bd. of Ed. of Hendrick Hudson CSD v. Rowley, 458 U.S. 176 (1982).*

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4. Sometimes, educational benefit is easy to track.

“The Act requires participating States to educate handicapped children with nonhandicapped children whenever possible.”

“When that ‘mainstreaming’ preference of the Act has been met and a child is being educated in the regular classrooms of a public school system, the system itself monitors the educational progress of the child.”

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**Some IDEA History**  
*Bd. of Ed. of Hendrick Hudson CSD v. Rowley, 458 U.S. 176 (1982).*

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4. Sometimes, educational benefit is easy to track.

“Regular examinations are administered, grades are awarded, and yearly advancement to higher grade levels is permitted for children who attain an adequate knowledge of the course material. The grading and advancement system thus constitutes an important factor in determining educational benefit.”

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**Some IDEA History**  
*Bd. of Ed. of Hendrick Hudson CSD v. Rowley, 458 U.S. 176 (1982).*

5. So what's the test for folks *not* mainstreamed?

"We do not attempt today to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act."

A school satisfies the FAPE obligation when it provides "Personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction."

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**Some IDEA History**  
*Ridgewood Bd. of Ed. v. N.E., 30 IDELR 41 (3<sup>rd</sup> Cir. 1999).*

- Meaningful benefit "depends."
  - No single standard for educational benefit
  - Lower court provided no analysis of the type and amount of learning of which the student was capable
  - "When students display considerable intellectual potential, IDEA requires a great deal more than negligible benefit."

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**Some IDEA History**  
*Beth B. v. Lake Bluff Sch., 36 IDELR 121 (7<sup>th</sup> Cir. 2002).*

- "Any" benefit is not meaningful benefit.
  - Parent argued that if the student received "any benefit" in the mainstream, the student could not be moved to a more restrictive setting.
  - Court: Nope. Such a reading would "essentially vitiate" the school's ability place students in a separate "special education environment" that may be necessary to educate the student.

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**Some IDEA History**  
*OSEP Memorandum 95-9, 21 IDELR 1152 (OSEP 1994).*

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- The interplay of LRE and educational benefit

“Any alternative placement selected for the student outside of the regular education environment must maximize opportunities for the student to interact with nondisabled peers, to the extent appropriate to the needs of the student.”

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**Raised Expectations in IDEA '97**  
*20 U.S.C. §1401(c)(3)(1997).*

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- Congress began the 1997 reauthorization with language reminding folks that many students with disabilities had been excluded from school or poorly served at school prior to the EHA.

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**Raised Expectations in IDEA '97**  
*20 U.S.C. §1401(c)(3)(1997).*

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- The law is a success....

“Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this Act has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.”

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**Raised Expectations in IDEA '97**  
20 U.S.C. §1401(c)(4)(1997).

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- And it's time to raise the bar...

“However, the implementation of this Act **has been impeded by low expectations**, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.”

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**Higher expectations or “Curricular LRE”**  
20 U.S.C. §1401(c)(5)(1997).

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- So, here's the new requirement....
  - “Over 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—having high expectations for such children and ensuring their **access in the general curriculum to the maximum extent possible[.]”**

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**Higher expectations or “Curricular LRE”**  
20 U.S.C. §1401(c)(5)(1997).

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- So what does this mean?
  - Grade-level performance is the goal, BUT
  - Total grade-level performance may not be appropriate for all students with disabilities.
  - IEP Teams need to have higher expectations, and aim as close to grade-level as possible

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**Isn't that language familiar?**

- Note that Congress used language that we commonly associate with traditional LRE
- Traditional LRE notions guide thinking:
  - LRE begins with a default (regular classroom)
  - LRE yields to educational benefit
  - LRE is not an "all or nothing" requirement

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**What is "Curricular LRE?"**

- Consider this working definition:
  - Exposure to the grade-level curriculum to the maximum extent appropriate for this student's educational benefit.
- The author prefers "curricular LRE" because it reminds us of the dynamic.. Feel free to think "standards-based IEPs" instead.

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**Raised Expectations in IDEA '97**  
34 CFR §300.137 (1999).

- Consistent with Congress' raising the bar, the 1999 Regs show significant changes.
- A few examples..... State Goals
  - States must establish performance goals for students with disabilities that "are consistent, to the maximum extent appropriate, with other goals and standards for all children established in the state."

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**Raised Expectations in IDEA '97**  
34 CFR §300.347(a)(5) (1999).

- A few examples..... State Assessments
  - Some simple requirements prior to NCLB.
    - A statement of modifications needed for student participation in state or district-wide assessments
    - If the child will not participate in a particular state or district wide assessment, a statement describing the reasons, and explanation of how the student will be assessed.

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**Raised Expectations in IDEA '97**  
*Working Together for Students with Disabilities: IDEA & NCLB, ED FAQ, December 1, 2005, p. 3.*

- A few examples..... State Assessments
  - What's the concern? "Too often in the past, students with disabilities were excluded from assessments and accountability systems, and the consequence was that they did not receive the academic attention and resources they deserved."

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- A few examples..... Required IEP members
  - "The child's regular education teacher's membership on the IEP Team is particularly important to meeting the statutory requirement...that the IEP explain how the child's needs will be met so that the child can be involved in and progress in the general curriculum."

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**Raised Expectations in IDEA '97**  
34 CFR §300.26(b)(3) (1999).

- A few examples..... Why are services provided?
  - The definition of "**Specially designed instruction**" was changed to include a statement of purpose, to ensure "access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children."

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**Raised Expectations in IDEA '97**  
34 CFR §300.347(a)(1) (1999).

- A few examples..... Present Levels of Educational Performance.
  - The IEP must now include a "statement of the child's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general curriculum."

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**Raised Expectations in IDEA '97**  
Commentary to §300.347(a)(1) (1999).

- Why required a statement of PLEP?

"The requirement is important because it provides the basis for determining what accommodations the child needs in order to participate in the general curriculum to the maximum extent possible."

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**Raised Expectations in IDEA '97**  
§300.343(c)(2)(1999).

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- A few examples.... Review of annual IEP Goals
  - Periodically, and no less than annually, the IEP Team should meet and revise the IEP as appropriate to address "Any lack of expected progress toward the annual goals... and in the general curriculum, if appropriate."

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**Raised Expectations in IDEA '97**  
§300.347(a)(1999).

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- A few examples.... Statement of IEP services to be provided for the child
  - To be involved & progress in the general curriculum, & participate in extracurricular and nonacademic activities;
  - To be educated and participate with other children with disabilities and nondisabled children;
  - An explanation of the extent, if any, to which the child will not participate in the regular class and in the activities previously described.

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**Raised Expectations in IDEA '97**  
Commentary on §300.347(a)(3) (1999).

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- "In order to ensure full access to the general curriculum, it is not necessary to amend Sec. 300.347(a)(3)(ii) to clarify that a child's involvement and progress in the general curriculum must be 'to the maximum extent appropriate to needs of the child.' **The individualization of the IEP process, together with the new requirements related to the general curriculum, should ensure that such involvement and progress is 'to the maximum extent appropriate to the needs of the child.'**"

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**Raised Expectations in IDEA '97**

- What does this mean?
  - The regular curriculum is the default expectation for all kids.
  - Some students, because of disability, may not be able to benefit educationally in the full regular curriculum.
  - In such cases, the IEP team's job is to provide as much access and progress in the regular curriculum as possible, while still providing educational benefit.

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**Raised Expectations in NCLB**

- Congress: Everybody gets assessed & everybody will work at grade level.
- ED provided the reality check: 1% and 2% rules in 2007 provided for different assessments for some students.
  - Still, however, proximity to grade-level performance is important.

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**Raised Expectations in NCLB**

- ED: For students with significant cognitive impairments, don't assume alternate achievement standards are appropriate.

"It would be inappropriate to **require** a child with the most significant cognitive disabilities to be taught and assessed based on alternate achievement standards."

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**Raised Expectations in NCLB**  
*"Working Together," supra, p. 5.*

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- ED: IDEA-eligibility & grade-level learning are not mutually exclusive.

"Being in special education does not mean that a student cannot learn and reach grade level standards. In fact, the majority of students with disabilities should be able to meet those standards."

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**2004 IDEA Reauthorization**

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- Following NCLB, the 2004 Reauthorization did some fine-tuning on access to curriculum for students with disabilities.
  - IDEA 2004 incorporated a healthy dose of "special education students are regular education students first."

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**2004 IDEA Reauthorization**  
*A New Era: Revitalizing Special Education for Children and Their Families, p. 7, (July 1, 2002).*

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- From the President's Commission Report

**"Children placed in special education are general education children first.** Despite this basic fact, educators and policy-makers think about the two systems as separate and tally the cost of special education as a separate program, not as additional services with resultant add-on expense."

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**2004 IDEA Reauthorization**  
*A New Era: Revitalizing Special Education for Children and Their Families, p. 7, (July 1, 2002).*

“In such a system, children with disabilities are often treated not as children who are general education students and whose instructional needs can be met with scientifically based approaches; they are considered separately with unique costs—**creating incentives for misidentification and academic isolation**— preventing the pooling of available resources and learning.”

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**2004 IDEA Reauthorization**  
*A New Era: Revitalizing Special Education for Children and Their Families, p. 7, (July 1, 2002).*

“General education and special education share responsibilities for children with disabilities. They are not separable at any level—cost, instruction or identification.”

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**2004 IDEA Reauthorization**

- A few examples.... A Commenter asks for more changes to definition of “specially designed instruction.”
  - “Ensuring that children with disabilities have access to the general curriculum is a major focus of the requirements for developing a child’s IEP.... We do not believe additional language is necessary”

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**2004 IDEA Reauthorization**

- A few examples.... Short-term goals no longer required except for students taking assessment on alternate achievement standards.
  - If on grade level, the curriculum provides the student's short-term goals.
  - "For some children, goals may be needed for activities that are not closely related to a State's academic content and academic achievement standards."

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**2004 IDEA Reauthorization**

- A few examples.... Present Levels of Functional Performance added to 1997's PLEPs
  - "It is not necessary to include a definition of 'functional' in these regulations because we believe it is a term that is generally understood to refer to skills or activities that are not considered academic or related to a child's academic achievement. Instead, 'functional' is often used in the context of routine activities of everyday living."

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**2004 IDEA Reauthorization**

- A few examples.... State Assessments:
  - IEP Team must indicate why the regular assessment is inappropriate AND why the chosen assessment is appropriate. §300.320(a)(6).
  - No requirement to include accommodations in IEP that allow a student to participate in assessment *but would also invalidate the assessment.*  
--Commentary to 2006 Regs, p 46667.

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**Standards-based IEPs**  
*Commentary to 2007 Assessment regs, 72 Fed. Reg. 17758 (2007).*

- Incorporating state-based content standards in IEPs is one way to get the job done.

“One way to help ensure that students have access to grade-level content before they are assessed based on modified academic achievement standards, and receive instruction in grade-level content after they are assessed based on modified academic achievement standards, is to require IEP Teams to include goals that are based on grade-level content standards in the IEPs of these students....”

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**Standards-based IEPs**  
*Commentary to 2007 Assessment regs, 72 Fed. Reg. 17758 (2007).*

- Incorporating state-based content standards in IEPs is one way to get the job done.

“Such an approach focuses the IEP Team and the student on grade-level content and the student’s achievement level relative to those content standards.”

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**Wyoming & Standards-based IEPs**

- Extended Wyoming Academic Content Standards and Academic Benchmarks
  - The grade-level, extended Wyoming Academic Content Standards and Academic Benchmarks define the essential knowledge and skills that allow students with the most significant cognitive disabilities to achieve high academic expectations and to access the general academic curriculum.”

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**Wyoming & Standards-based IEPs**

- Extended Wyoming Academic Content Standards and Academic Benchmarks
  - “Grades kindergarten through eighth and grade eleven are specified in order to promote access to the general education standards and participation in rigorous levels of instruction aligned to the Wyoming Academic Content Standards and Academic Benchmarks to support individual student growth. “

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**Don't IDEA's individualized IEP goals conflict with NCLB's "everybody at grade level"?**

- No conflict according to ED, because...

“Both laws have the same goal of improving academic achievement through high expectations and high-quality education programs. *NCLB* works to achieve that goal by focusing on school accountability, teacher quality, parental involvement through access to information and choices about their children's education, and the use of evidence-based instruction. *IDEA* complements those efforts by focusing specifically on how best to help students with disabilities meet academic goals.”

--*Working Together*, p. 1

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**IDEA already addressed this.**

- Isn't this similar to the tension in IDEA between educational benefit and the LRE presumption of mainstream placement?
- How does IDEA address the tension?
  - IDEA Job #1 is educational benefit
  - While regular classroom placement is the default, a more restrictive placement is possible when necessary to satisfy Job #1.

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**IDEA already addressed this.**

- The educational benefit & LRE dynamic
  - "But when education in a regular education classroom cannot meet the handicapped child's unique needs, the presumption in favor of mainstreaming is overcome and the school need not place the student in regular education." *Daniel R.R., supra.*
  - "The LRE requirement shows Congress' strong preference in favor of mainstreaming, but does not require, or even suggest, doing so when the regular classroom setting provides an unsatisfactory education." *Beth B. (7th Circuit), supra.*

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**What can we learn from the cases?**

- Pure "curricular LRE" cases are rare
- BUT: Traditional LRE cases addressing the interplay with educational benefit can also provide an excellent body of law with an analogous "default with exceptions" dynamic.

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**What can we learn from the cases?**  
*Walczak v. Florida Union FSD, 27 IDELR 1135 (2nd Cir. 1998).*

- The proper function of a "default."
  - Slow and inconsistent progress may be the way a child progresses, and not evidence of an inappropriate program.
  - That the regular classroom is inappropriate does not justify a move directly to a residential placement.
  - Lesson: These are not "all or nothing" concepts. If not all regular curriculum, how much?

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**What can we learn from the cases?**  
*Fresno Unified School District, 52 IDELR 150 (SEA Cal. 2009).*

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- Is the default given a fighting chance to succeed?
  - A magnet HS (with lottery-based admissions) sought to move a student with mild intellectual disability to a self-contained placement.
  - School's argument: since the student does not perform at grade level in core academics, she gets no educational benefit from regular classroom.

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**What can we learn from the cases?**  
*Fresno Unified School District, 52 IDELR 150 (SEA Cal. 2009).*

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- The ALJ: "a student's failure to perform at grade level is not necessarily indicative of a denial of FAPE, as long as the student is making progress commensurate with his abilities."
- The Student was making some progress toward IEP goals at a functional level in core English and math
- A note: would it have helped the school if the regular ed algebra and English teachers had made more of an effort?

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**What can we learn from the cases?**  
*Fresno Unified School District, 52 IDELR 150 (SEA Cal. 2009).*

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- The algebra teacher:
 

"[Teacher] does not believe student belongs in her class because she is not able to do grade level work. [Teacher] does not track Student's progress..... [Teacher] does not believe Student has received non-academic benefits because Student does not interact with the students who are doing grade-level work. [Teacher] has not encouraged social interaction in the classroom. She has not considered making changes in the classroom to foster social interaction or enhance academic benefit to Student."

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**What can we learn from the cases?**  
*Fresno Unified School District, 52 IDELR 150 (SEA Cal. 2009).*

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- The English teacher:

“[Teacher] does not consider Student to be ‘her student’ because Student was not on her attendance roll, Student sits in the back of her classroom with her ‘tutor,’ she does not provide student’s work assignments, and did not grade her work.... [Teacher] did not get involved in the development of her curriculum or her work assignments. She never discussed Student’s progress or lack thereof in her class with Mother. She attended the most recent IEP team meeting last semester as a formality.”

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**What can we learn from the cases?**  
*Pickens County Sch. Dist., 110 LRP 2301 (SEA Ga. 2009).*

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- Reducing expectations requires clean hands.
  - The district was less than consistent in its provision of IEP services to a student with Rett's Syndrome and an intellectual disability. Among other lapses,
    - Only 25% of required OT services, and 35% of speech services were provided during three months in the fall of 2009.
    - While the BIP required data collection, no data was collected from September 2008 to January 2009.
    - The student was walked around the school for hours every school day. There was “no reliable testimony” that instruction was provided during this time.

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**What can we learn from the cases?**  
*Pickens County Sch. Dist., 110 LRP 2301 (SEA Ga. 2009).*

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- Of the ten goals, “four were Goals practically the same as the prior year’s Goals, but with lower mastery criteria.” One goal was higher, and two remained the same.
- Parents objected to the reduced expectation, but the school argued that the 2008-’09 goals were “too ambitious.” Parents eventually filed, and sought residential placement.
- ALJ: The most significant claim is that the same IEP was used year after year with similar goals and no progress.

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**What can we learn from the cases?**  
*Pickens County Sch. Dist., 110 LRP 2301 (SEA Ga. 2009).*

- The district, aware of the parents' concerns regarding lack of progress and its own failures to provide required services "chose the easiest method of handling" the student's lack of progress, i.e., reducing expectations.
- The ALJ was "not provided evidence to indicate that this reduction in expectations will likely result in progress." Parents were awarded two years of residential placement.
- Lesson: Don't do this.

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**What can we learn from the cases?**  
*Brillon v. Klein ISD, 41 IDELR 121 (5<sup>th</sup> Cir. 2004)(Unpublished).*

- When all grade-level curriculum is too much....
  - "[T]o implement the goals and objectives that the parties agreed were appropriate for Ethan in the second grade, the 2001 ARD committee reported that the 'curriculum would have to be modified beyond recognition.'"
  - Lesson: This students could not handle all of the grade-level curriculum and benefit. The question: how much could he handle, and still benefit?

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**What can we learn from the cases?**  
*S.K. v. Parsippany-Troy Hills Board of Education, 51 IDELR 106 (D.C.N.J. 2008)(unpublished).*

- Can a more restrictive placement be required for a student to access grade level curriculum? Yes.
  - The student has multiple disabilities including autism, specific learning disabilities, ADHD, and speech and language impairments.
  - He was mainstreamed for three years (grades K-2) with significant supports, and poor results. He was not making progress in basic academic skills.

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**What can we learn from the cases?**  
*S.K. v. Parsippany-Troy Hills Board of Education*, 51 IDELR 106 (D.C.N.J. 2008)(unpublished).

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- The school sought a more restrictive placement, and the parents objected.
- The parent's independent evaluator concluded: "It is clear, however, that he requires special education to develop basic reading skills commensurate with his ability and to develop basic skills in math and written expression so that he has the necessary competencies before transitioning to higher grades."

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**What can we learn from the cases?**  
*S.K. v. Parsippany-Troy Hills Board of Education*, 51 IDELR 106 (D.C.N.J. 2008)(unpublished).

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- Said the court: "a self-contained placement is necessary for N.K. to develop the fundamental skills he has failed to develop in the several years he has spent in the classroom.... N.K.'s failure to achieve more than negligible benefit during his three year's worth of regular education instruction persuades this court that the challenged IEP's proposed placement of N.K. in a self-contained classroom was 'reasonably calculated to enable the child to receive educational benefits.'"

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**What can we learn from the cases?**  
*J.S. v. North Colonie Central School District*, 51 IDELR 150, 586 F.Supp. 2d 274 (N.D.N.Y. 2008).

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- Are there times when functional skills matter more than mastering grade level curriculum?
- Parents objected to an IEP removing the student from a regular education global history and English class based on Student's difficulty with language-based subjects and expert testimony on the need for small group instruction in these classes.

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**What can we learn from the cases?**  
*J.S. v. North Colonie Central School District*, 51 IDELR 150, 586 F.Supp. 2d 274 (N.D.N.Y. 2008).

- The student's significant deficiencies in language, reading, writing and social skills made education in these two general education classes ineffective, despite significant supplementary aids and services.
- The Hearing Officer found credible testimony that "plaintiff isolated himself in the general classroom setting when faced with difficulties understanding materials presented to him and requires constant attention from his personal aide to take notes or participate in class." The IEP change was upheld.

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**What can we learn from the cases?**  
*J.S. v. North Colonie Central School District*, 51 IDELR 150, 586 F.Supp. 2d 274 (N.D.N.Y. 2008).

- During the pendency of the hearing, the student took a global history class numerous times and eventually passed it.
- Citing the school psychologist's testimony, the court found that rather than repeatedly taking the global history course (since he failed exit level exams in the course numerous times), he should have been focusing on other skills as he could not possibly achieve a diploma before he aged out of services.

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**What can we learn from the cases?**  
*Bend-Lapine School District v. K.H.*, 43 IDELR 191 (D.C. Or. 2005), *affirmed*, 48 IDELR 33 (9<sup>th</sup> Cir. 2007).

- Present levels of performance matter.
- Court rules that student was denied FAPE where the IEP failed to establish a baseline of student behaviors and measurable goals.
- In short: "Without that baseline of current performance and/or behavior, it is difficult to draft measurable and relevant annual goals."

66 (cont'd)

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**What can we learn from the cases?**  
*Bend-Lapine School District v. K.H., 43 IDELR 191 (D.C. Or. 2005), affirmed, 48 IDELR 33 (9th Cir. 2007).*

"The District provided the following information regarding K.H.'s 'behaviors,' presumably based on K.H.'s disability: her behaviors 'resulted in short term suspensions,' K.H. had been physically and verbally aggressive, and K.H. 'had been involved in some sexual harassment incidents.'

It was further noted that K.H. had difficulty maintaining friendships, verified by the behavioral inventory, and that people 'don't always enjoy [K.H.'s] company.' Finally, K.H.'s 'inappropriate behaviors interfere with her success in the classroom both socially and academically.'"

67 (cont'd)

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**What can we learn from the cases?**  
*Bend-Lapine School District v. K.H., 43 IDELR 191 (D.C. Or. 2005), affirmed, 48 IDELR 33 (9th Cir. 2007).*

"The ALJ correctly found that the statement quoted above was insufficient to determine an accurate baseline of K.H.'s behaviors affected by her disability."

Lesson: How would the IEP Team know what was going on with summary statements rather than data? How would the Team know what to do for behavior management? And how would it know whether the IEP was successful with no baseline with which to compare?

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**What can we learn from the cases?**  
*Farmington ISD #192, 109 LRP 32944 (SEA Minn. 2007).*

- How do present levels help?
 

"At a minimum, the IEP must include PLEP statements that clearly describes how the Student's disability affects his involvement and progress in the general curriculum. This may be accomplished by stating where the Student is performing in relation to the current competencies all eighth graders are expected to have developed by the start of the eighth grade. Appropriate goals to aid in closing the achievement gap for the Student must then be determined, and then the services necessary to help the Student reach those goals."

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**What can we learn from the cases?**  
*E.S. v. Katonah-Lewisboro Sch. Dist., 55 IDELR 130 (S.D.N.Y. 2010).*

- Was there progress?
  - The district did not change goals and objectives for a student from one year to the next, despite evidence of success in a private placement.
  - Arguing that the student did not progress at the private school required the district to focus on test scores at the private school (while the district *discounted* test scores as data when arguing its own success with the student).

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**What can we learn from the cases?**  
*E.S. v. Katonah-Lewisboro Sch. Dist., 55 IDELR 130 (S.D.N.Y. 2010).*

- "On this record, it is not credible that after a full year of education, B.S.'s needs were identical to those [the district] found the year before."
- "The Court finds that recycling an old IEP is not legally sufficient because it is not individualized or appropriate for B.S. for the specific school year to which it pertains."
- Lesson: Watch for IEP Team discussion of student progress while IEP statements of present levels remain unchanged from IEP to IEP.

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**What can we learn from the cases?**  
*D.S. v. Bayonne Bd. of Educ., 54 IDELR 141 (3<sup>rd</sup> Cir. 2010).*

- Grades as evidence of progress.
  - On Rowley and grades: "the Supreme Court made its statements regarding the limited significance of grade-to-grade advancement in the situation before it in which the mainstreaming preference of the IDEA had been met... [and the student] was performing above average in the regular classrooms of a public school system."

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**What can we learn from the cases?**  
*D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (3<sup>rd</sup> Cir. 2010).

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- What is the significance, then, of grades in classes with only special education students set apart from the regular classes of a public school?
- "a court should not place conclusive significance on special education classroom scores, a conclusion that we believe is reinforced by the circumstances that, as here, there may be a disconnect between a school's assessment of a student in a special education setting and the student's achievements in standardized testing."

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**What can we learn from the cases?**  
*D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (3<sup>rd</sup> Cir. 2010).

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- Lesson: No one source of data should be used to determine student success or progress.
- And, by the way, regular education grades are equally subject to suspicion as they may not reflect skill acquisition. That's why the Supreme Court said passing grades and advancement grade to grade does not "automatically" mean benefit. The grades have to be meaningful, just like the benefit.

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**What can we learn from the cases?**  
*City of Chicago School District 299*, 50 IDELR 300 (SEA Ill. 2008).

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- Teams must carefully consider which services will be provided, and how they are to be provided.
- "However, after listening to testimony it is quite clear that the Student has been given extreme modifications and accommodations which have masked the Student's struggling and that the benchmarks set for him are too low. He has not been given an appropriate program in the necessary intensity to address his learning deficits....." (cont'd)

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**What can we learn from the cases?**  
*City of Chicago School District 299, 50 IDELR 300 (SEA III, 2008).*

- The school argued that the student's passing grades and success on modified tests was evidence of benefit.
- "[E]mploying accommodations and other compensatory strategies without increasing a student's skill level does not represent compliance with the IDEA. It is not sufficient to simply "escort" an educationally challenged student through the school system."
- ALJ: He is not independent in his work, cannot read, write or spell, and the district is not addressing these concerns with the necessary intensity.

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**What can we learn from the cases?**  
*Sherman v. Mamaroneck Union Free SD, 340 F.3d 87 (2nd Cir. 2003).*

- The wrong service can deny FAPE.
  - Student with a learning disability in math was provided through his IEP with a TI-82 calculator. The school refused a parent request to use a TI-92 as it would factor for him, a skill he was capable of learning and one required by the grade level curriculum.
  - The Court: The TI-92 is inappropriate because "it would allow Grant to answer questions without demonstrating any understanding of the underlying math concepts."

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**What can we learn from the cases?**  
*Sherman v. Mamaroneck Union Free SD, 340 F.3d 87 (2nd Cir. 2003).*

"If a school district simply provided that assistive device requested, even if unneeded, and awarded passing grades, it would in fact deny the appropriate educational benefits the IDEA requires."

Lesson: Providing excessive or inappropriate assistance can deny access to grade-level curriculum and FAPE.

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**What can we learn from the cases?**  
*Pasadena ISD, 58 IDELR 201 (SEA Tex. 2012).*

- Access to curriculum & staff training.
  - Parents of a student with autism complained that the student was not receiving the state mandated health curriculum, including sex education.
  - Some staff indicated that the instruction was not appropriate for the student given his disability. Parent disagreed, found the comments disrespectful, and filed for due process.

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**What can we learn from the cases?**  
*Pasadena ISD, 58 IDELR 201 (SEA Tex. 2012).*

- Eventually, staff proposed a set of health objectives based on data from the student's responses to health questions on a criterion-referenced assessment tool.
- Hearing Officer: The delay in providing the instruction did not cause "substantive educational harm."
- While a few comments by staff didn't justify staff training, "the fact that it was the parent, not school staff, who initiated the addition of human sexuality to Student's educational program" *does* require staff development.

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**What can we learn from the cases?**  
*Pasadena ISD, 58 IDELR 201 (SEA Tex. 2012).*

- "In that regard if staff had been trained on how to teach human sexuality to students with autism and intellectual disabilities the school district might have addressed Student's needs in this area" in a more timely way.
- The Hearing Officer orders training of staff in this area to be completed by the first six weeks of the school year.
- Lesson: School staff must be prepared to provide instruction in all of the state's curriculum to students with a variety of impairments and needs.

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