

# FAPE in the LRE

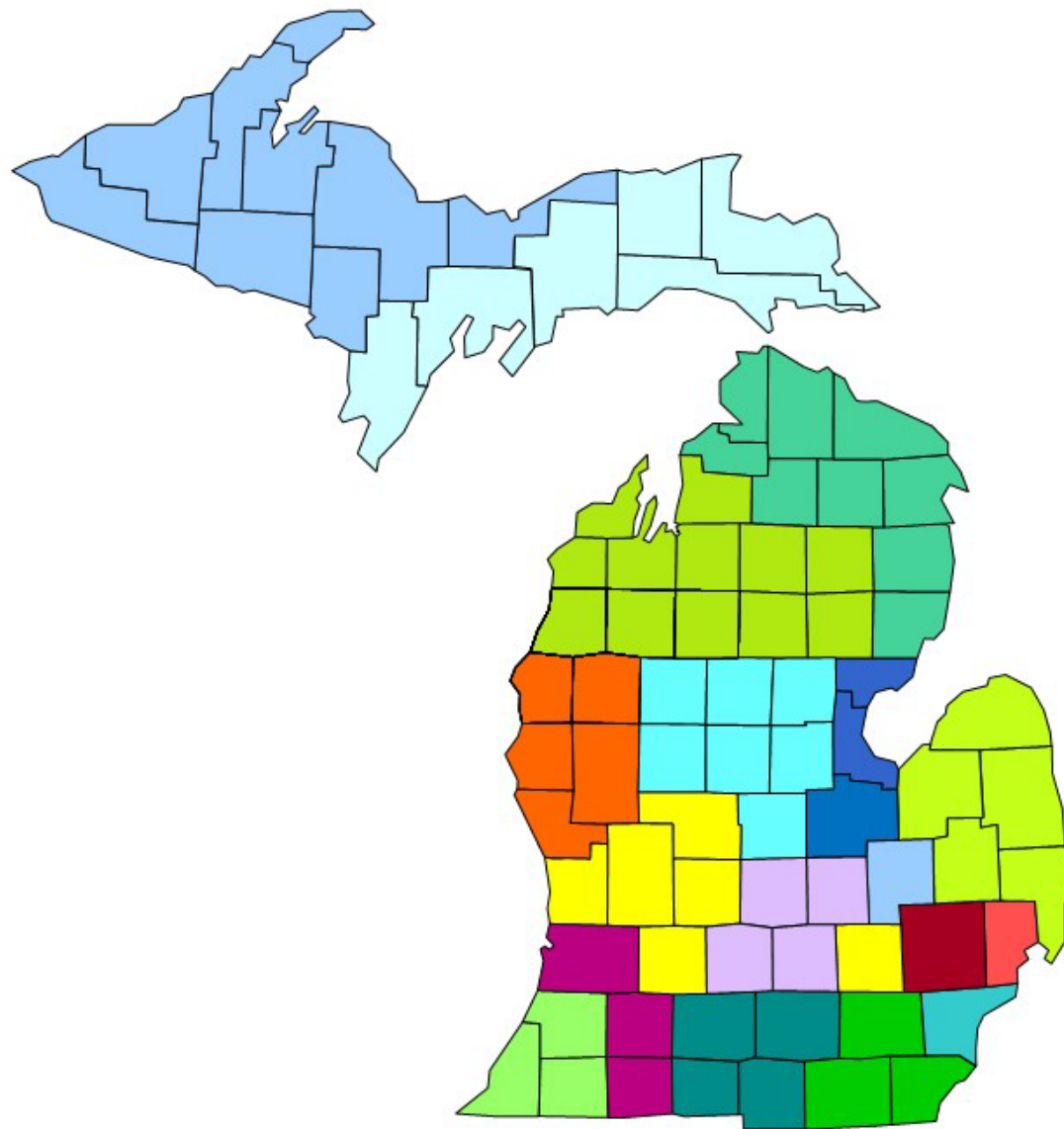
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Understanding Your Rights



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Free parent training and  
information to improve  
educational services and  
outcomes for students  
with disabilities across  
Michigan.



# Today's Special Education Acronyms



**FAPE**

Free Appropriate Public Education

**IDEA**

Individuals with Disabilities Education Act

**IEP**

Individualized Education Program

**LRE**

Least Restrictive Environment

# The Purpose of **IDEA**

## INDIVIDUALS WITH DISABILITIES EDUCATION ACT



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To ensure that all children with disabilities have available to them **a free appropriate public education** that emphasizes special education and related services designed to meet their **unique needs** and **prepare them for further education, employment, and independent living**;

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To ensure that the rights of children with disabilities and parents of such children are protected;

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To assist States, localities, educational service agencies, and Federal agencies to **provide for the education of all children with disabilities**;

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To assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

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To ensure that educators and parents have the necessary tools to improve educational results for children with disabilities;

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To assess, and ensure the effectiveness of, efforts to educate children with disabilities.

# FAPE

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Free



Appropriate



Public



Education

Schools must provide a FAPE through programs and services. The FAPE must meet the student's unique needs and provide an educational benefit.

# FAPE

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**Free**



**Appropriate**



**Public**



**Education**

Special education and related services are provided by public schools at no cost to parents.

# FAPE

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Free



**Appropriate**



Public



Education

Students are entitled to an education that meets their needs.

How the courts have defined appropriate:

- “some educational benefit” – Hendrick Hudson District Board of Education v. Rowley (1982)
- “**appropriately ambitious in light of [the child’s] circumstances**” – Endrew F. v. Douglas County School District (2017)

# FAPE

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Free



Appropriate



**Public**



Education

Children receiving special education programs and related services have a right to receive an education provided by the public school system.



# FAPE

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Free



Appropriate



Public



**Education**

Every child who is eligible for special education has a right to an education.

The education should prepare all children for their future including postsecondary education, employment, and independent living.

# Free Appropriate Public Education

# IDEA

INDIVIDUALS WITH DISABILITIES  
EDUCATION ACT

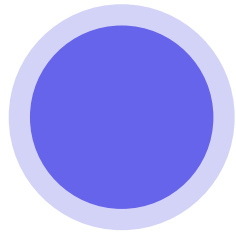
## 300.101 Free appropriate public education (FAPE).

- (a) General. A **free appropriate public education must be available to all children** residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).
- (b) FAPE for children beginning at age 3.
  - (1) Each State must ensure that—
    - (i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and
    - (ii) An IEP or an IFSP is in effect for the child by that date, in accordance with §300.323(b).
  - (2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.
- (c) Children advancing from grade to grade.
  - (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, **even though the child has not failed or been retained** in a course or grade and is advancing from grade to grade.
  - (2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an **individual basis** by the group responsible within the child's LEA for making eligibility determinations.

# What is the purpose of an individualized education program (IEP)?

Please type answers in the chat.

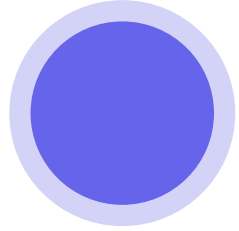
- Offer of FAPE
- The individualized education program (IEP) provides information about how your child's education is personalized to meet his or her needs.



Create an  
**Individualized  
Education  
Program (IEP)**  
for the child

- Present Level of Academic Achievement and Functional Performance
- Measurable annual goals
- Accommodations and modification so the child can meaningfully participate in general education, non-academic, and extracurricular school experience
- Special Education and related services that meet the child's specific needs

# IEP & FAPE



# Assistive Technology

Must ensure that assistive technology devices / services are made available to a child with a disability if required as part of the child's

- (1) Special education
- (2) Related services
- (3) Supplementary aids and services

# FAPE

**Sec. 300.105**

Assistive technology device means **any item**, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is **used to increase, maintain, or improve the functional capabilities of a child with a disability.**

The term does not include another human or a medical device that is surgically implanted, or the replacement of such device.

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Please type examples of AT in the chat.

**Calculator**

**Picture Schedule**

**Adaptive sports  
equipment**

**Augmentative  
and Alternative  
Communication  
(AAC)**

**Magnifying glass**

**Screen reading  
software**

**Text-to-speech**

**Speech-to-text**

**Adaptive  
silverware**

**Large print  
materials**

**Notetaking  
systems**

**Pencil grip**

**Raised line paper**

**Audio books**

**Wheelchair**

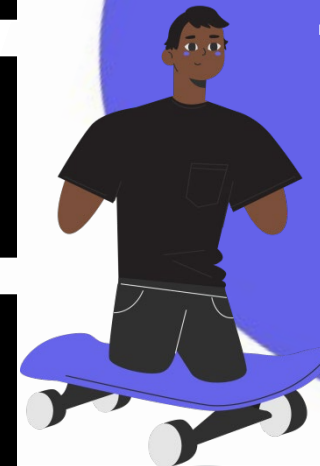
**Cane**

**Graphic  
Organizer**

**Seat Cushion**

**FM system**

**Timer**



# Assistive Technology

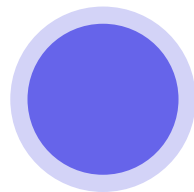


## Extended School Year (ESY) IDEA

ESY Services are provided to the child with a disability beyond the school year, in accordance with the IEP, and at no cost.

ESY services must be provided **only if a child's IEP Team determines the services are necessary for the provision of FAPE to the child.**

The public agency can not limit the ESY services to specific categories of disability or unilaterally limit the type, amount, or duration.



## Extended School Year (ESY) Michigan

There must be at least one current IEP annual goal where significant concerns exist regarding skill maintenance during a break in services. A student may be determined to need ESY services due to:

- 1) A serious potential for regression of skills beyond a reasonable period of recoupment;
- 2) The nature or severity of the disability; or
- 3) Critical stages or areas of learning.

**If there is no goal area of concern, ESY services are not needed for a FAPE.**

# FAPE

## Sec. 300.106



Determination of the need for ESY services should be made on an **individual basis**, not a formula or policy

ESY Services can be provided in **a variety** of ways:

- Traditional classroom
- School-based programs that vary in length of schedule
- Daily instruction in specific goal areas
- Small group instruction
- One or more related services at a community recreation program
- Cooperative programs with other agencies
- Consultation with a job coach
- A week of intensive review just prior to the beginning of the school year
- Home-based programs that include parent training

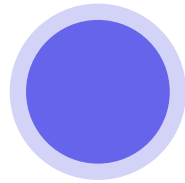
**ESY**  
Extended  
School Year



## Non-Academic Services

Each public agency must provide supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular activities for the child with a disability to have equal participation in those services and activities.

Examples: Counseling, athletics, transportation, health, recreation activities, groups or clubs sponsored by the school, referrals to agencies that provide assistance, and employment of students



## Program Options

The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

# FAPE

Sec. 300.107 & 300.110



Methods &  
Payments



Child Find



Physical  
Education



Routine  
checks of  
hearing aids  
and external  
components  
of medical  
devices



Full  
Educational  
Opportunity  
Goal



Residential  
Placement

# FAPE

OTHER REQUIREMENTS



# FAPE

## WHAT IS NOT REQUIRED?

### Superior Services

- Doesn't entitle to better services than other students receive

### Parent Requests

- Decisions are made by the IEP Team

### Preferred Treatment

- Entitled to the same opportunity



Free



Appropriate



Public



Education

## Is FAPE being provided?

Gianna is a 4<sup>th</sup> grade student diagnosed to be on the autism spectrum by her doctor. She is also eligible under ASD for special education. Based on her autism the school places Gianna in the ASD classroom in the district. Gianna's goals were set by the classroom targets. The current classroom has students in 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> grade. Gianna will be in this room until middle school. At that point, school staff have decided she will move to the ASD middle school program.

**Please type your  
answer in the chat.**



Free



Appropriate



Public



Education

## Is FAPE being provided?

Jacob is 20 years old with Cognitive Impairment (CI) eligibility for special education. Jacob exited high school with a certificate of completion. He attends an adult transition program at his intermediate school district. The program includes job exploration in areas he has interest, independent living skill development based on a current inventory of Jacob's skills and future living preference, and a reading goal because Jacob loves to read and would like to continue to develop his skills.

Please type your  
answer in the chat.

# LRE

## WHAT IS REQUIRED?

Educate the child in  
the Least Restrictive  
Environment (LRE)



# Least Restrictive Environment

## IDEA

INDIVIDUALS WITH DISABILITIES  
EDUCATION ACT

### 300.114 LRE requirements.

#### (a) General.

(1) Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§300.115 through 300.120.

(2) Each public agency must ensure that—

(i) To the **maximum extent appropriate**, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs **only** if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.



# LRE

Least Restrictive Environment

Student must be placed in the regular educational environment to the maximum extent appropriate to receive supports and services as determined by the individualized education program team.

\* Remember: Parents are members of the IEP Team.

# Least Dangerous Assumption

“Even if we are wrong about presuming a student’s ability to learn and to communicate in ways that are on par with his classmates without disabilities, being wrong about that isn’t as dangerous as the alternative.”

- Jorgensen (2018)

# Inclusive Classrooms

Students with significant cognitive disabilities who are educated in inclusive

settings achieve greater success in the areas of:

- Academic outcomes (*Bowman et al., 2020; Jimenez & Kamei, 2015; Hudson et al., 2013*)
- Social skills (*Asmus et al., 2017; Fisher & Meyer, 2002*)
- Communication (*Kleinert et al., 2019; Buckley et al., 2006*)
- Peer engagement (*Brock et al., 2017; Carter et al., 2016*)
- Positive behavior (*Loman et al., 2018*)
- Post-secondary outcomes (*Mazzotti et al., 2021; Test et al., 2009*)

When students without disabilities are educated in inclusive classrooms, they develop skills like empathy and advocacy, and there is no negative effect on their academic performance (Carter et al., 2016).

# Educational Placement

Students must be taught alongside their typically developing peers to the maximum extent appropriate

# IDEA

INDIVIDUALS WITH DISABILITIES  
EDUCATION ACT

## **300.116 Placements.**

In determining the educational placement of a child with a disability, *including a preschool child with a disability*, each public agency must ensure that—

(a) The placement decision—

- (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
- (2) Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;

(b) The child's placement—

- (1) Is determined at least annually;
- (2) Is based on the child's IEP; and
- (3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

# Findings

## IDEA

INDIVIDUALS WITH DISABILITIES  
EDUCATION ACT

### **1400(c) (5)**

- Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—
  - (A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to—
    - (i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and
    - (ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;

# IDEA

## INDIVIDUALS WITH DISABILITIES EDUCATION ACT

### **300.115 Continuum of alternative placements.**

(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

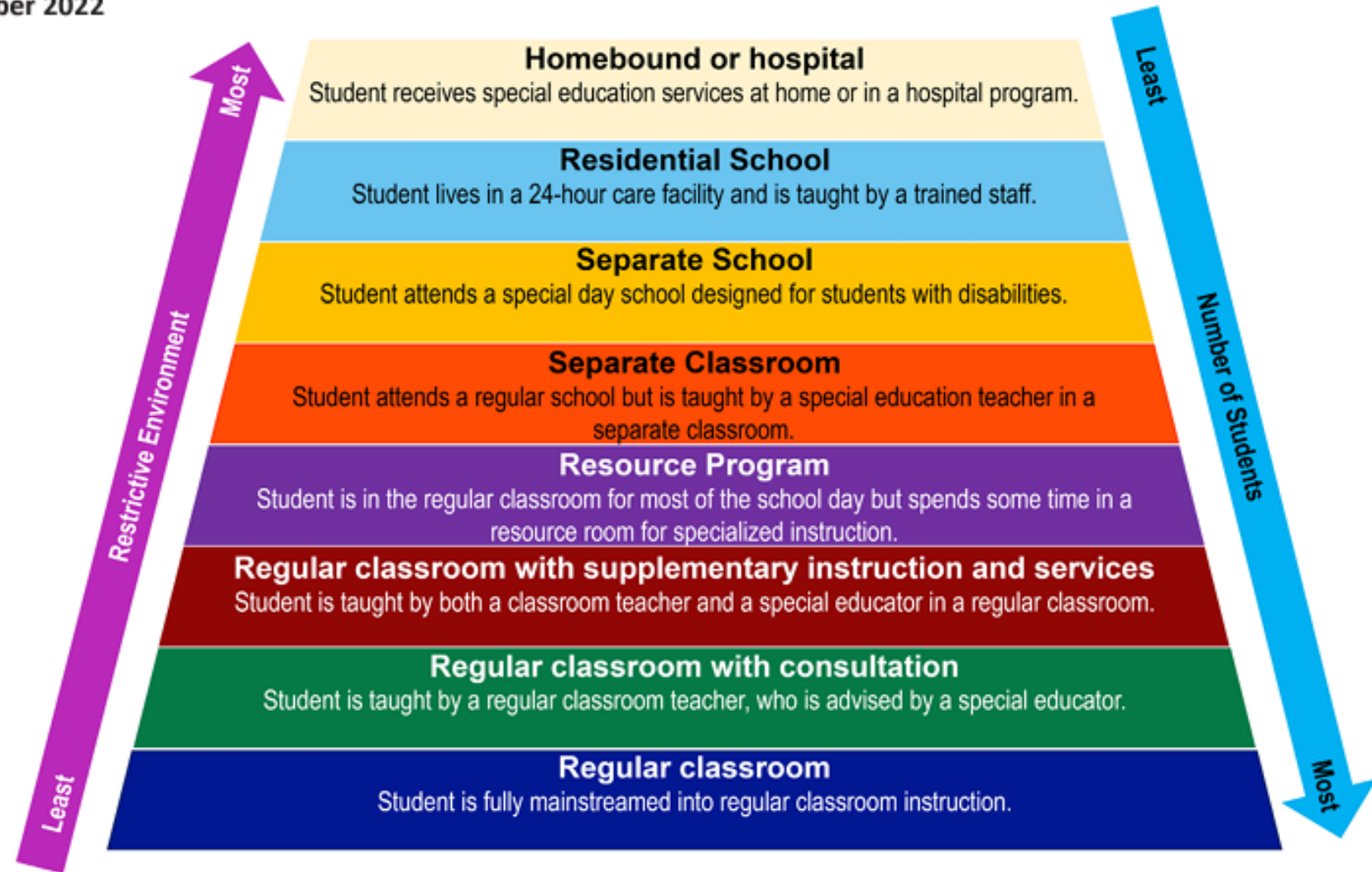
(b) The continuum required in paragraph (a) of this section must—

(1) Include the alternative placements listed in the definition of special education under §300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

# Least Restrictive Environment (LRE) Continuum

Michigan Department of Education Office of Special Education  
October 2022





## IEP Team for each child with a disability includes -

- (1) **parents of the child**;
- (2) **regular education teacher** of the child (if the child is, or may be, participating in the regular education environment);
- (3) **special education teacher** of the child
- (4) A representative of the public agency who -
  - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - (ii) Is knowledgeable about the general education curriculum;
  - (iii) Is knowledgeable about the availability of resources of the public agency.
- (5) An individual who can interpret evaluation
- (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) Whenever appropriate, the child with a disability

## Who is on the IEP Team?

<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2010-1/richards010710iep1q2010.pdf>



IEP decisions are not majority rule, the goal is consensus

- The IEP team should work towards a general agreement, but the public agency is ultimately responsible for ensuring the child receives FAPE
- It is not appropriate to make IEP decisions based on majority “vote”
- If agreement can not be reached then public agency makes the determination and provide the parents with Prior Written Notice (PWN)

## Who makes IEP decisions?

The IEP Team  
(which includes the parent)

<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2010-1/richards010710iep1q2010.pdf>

Prior Written Notice must include these five requirements:

- A description of the action that the school district proposes or refuses to take;
- An explanation of why the school district is proposing or refusing to take that action;
- A description of each evaluation procedure, assessment, record, or report the school district used in deciding to propose or refuse the action;
- A description of any other choices that the Individualized Education Program (IEP) Team considered and the reasons why those choices were rejected;
- A description of other reasons why the school district proposed or refused the action

## Prior Written Notice

Prior Written Notice (PWN) is required about placement **before** the IEP becomes effective.

# Mateo

Separate Classroom

Mateo is a middle school student with Emotional Impairment (EI) eligibility. He receives most of his instruction in a self-contained classroom. He participates alongside his peers without disabilities at lunch, P.E., and swim team practice.



# Mateo

Separate Classroom



## Questions the IEP Team considers:

- What are the needs of the student?
- Why was the student placement selected? What options were considered?
- Was he previously making progress in the general education classroom?
- If not, were the supplementary aids and services provided to the student sufficient to support the student's unique needs and to provide the student access to special education?
- What skills are being developed to be successful in general education classroom?
- My child was included in the past and it didn't work. Why would we try again?

# Luna

Regular Classroom with  
Consultation



Luna, a 5<sup>th</sup> grader with low vision eligible for special education under Visual Impairment (VI). She receives instruction in the regular education classroom with accommodations of braille materials, preferred seating, and a screen reader.

# Luna

Regular Classroom with  
Consultation



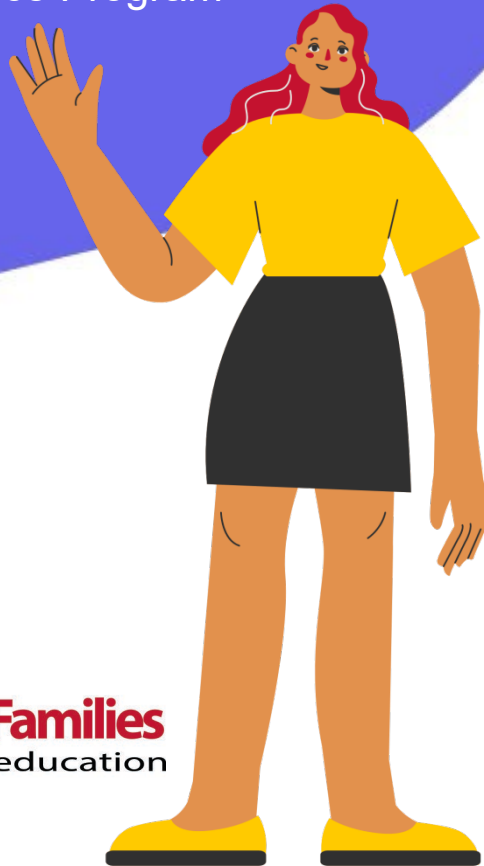
## Questions the IEP Team considers:

- What are the needs of the student?
- What supplementary aids and services does the student need?
- Who makes sure the supports are in place?
- How will the team support a smooth transition to middle school? There will be new challenges with changing classes.

# Harper

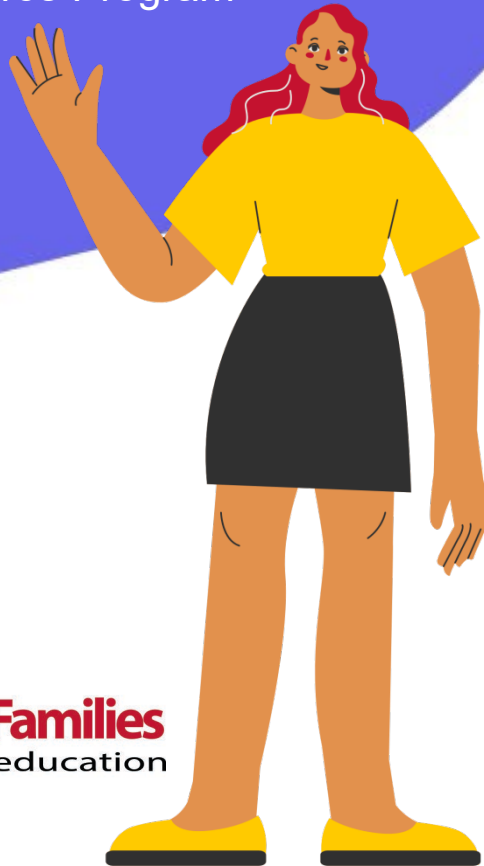
Regular classroom with  
supplementary instruction and  
services & Resource Program

Harper, a 10<sup>th</sup> grade student with ADHD, eligible under Other Health Impairment (OHI), spends her day in the regular education classrooms. A special education teacher periodically comes to the classrooms to observe and provide support. The special education teacher works with the regular education teachers to provide class notes and assignments broken down in steps for Harper. Harper has Resource Program one class period daily to organize her work from other class periods and provide additional instruction.



# Harper

Regular classroom with  
supplementary instruction and  
services & Resource Program



## Questions the IEP Team considers:

- What are the needs of the student?
- What supplementary aids and services does the student need?
- Are the supports and services consistently provided in all classes?
- When are the teachers able to connect to plan and develop needed supports?
- How does the resource program teacher know what happened in the other classes?



# Leo

Separate School



Leo, a 2<sup>nd</sup> grade student, is deaf, eligible under Deaf or hard of hearing (DHH). After detailed discussion about less restrictive environments, his IEP team, including his parents, decided Michigan's School for the Deaf currently best meets his needs.

# Leo

Separate School



## Questions the IEP Team considers:

- What are the needs of the student?
- What supplementary aids and services does the student need?
- The child is in a segregated school- how do we start making the steps back to his home district?
- What skills or behaviors are being taught (goals) that will allow Leo to participate in academic, non-academic, and extracurricular activities with non-disabled peers?

# Nonacademic Settings

**IDEA**

INDIVIDUALS WITH DISABILITIES  
EDUCATION ACT

## **300.117 Nonacademic settings.**

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107, each public agency must **ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child.**

The public agency must ensure that **each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.**

# IDEA

INDIVIDUALS WITH DISABILITIES  
EDUCATION ACT

## 300.42 Supplementary aids and services.

Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, **to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate** in accordance with §§300.114 through 300.116.

## Supplementary Aids & Services

# Example: Behavior at Recess

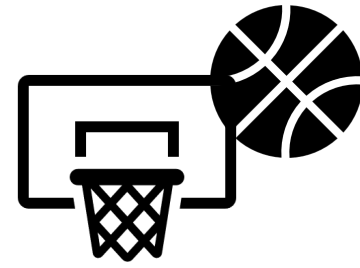


Social Skills



Behavior  
Intervention Plan

# Example: Basketball

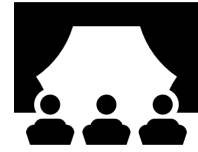


Sensory



Play Guide

# Example: School Play



Reading



Speech

# IDEA

INDIVIDUALS WITH DISABILITIES  
EDUCATION ACT

## **300.119 Technical assistance and training activities.**

Each SEA must carry out activities to ensure that teachers and administrators in all public agencies—

- (a) Are fully informed about their responsibilities for implementing §300.114; and
- (b) Are provided with technical assistance and training necessary to assist them in this effort.

## **300.120 Monitoring activities.**

- (a) The SEA must carry out activities to ensure that §300.114 is implemented by each public agency.
- (b) If there is evidence that a public agency makes placements that are inconsistent with §300.114, the SEA must—
  - (1) Review the public agency's justification for its actions; and
  - (2) Assist in planning and implementing any necessary corrective action.

SEA = State Education Agency = Michigan Department of Education (MDE)

**Michigan  
Department of  
Education's (MDE)  
Role in LRE**



# What if we don't agree?



**8 3 3 - K I D S - 1 S T**



Informal Meeting



Review of IEP or  
Facilitated IEP



Mediation



State Complaint



Due Process  
Complaint/Hearing



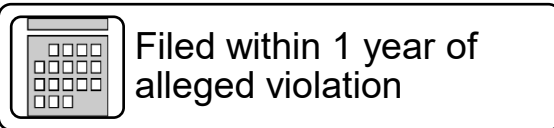
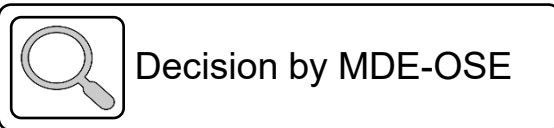
# What is a State Complaint?

**Written, signed statement that alleges a public agency violated...**

- State or federal special education rules or regulations related to special education programs and services (IDEA/MARSE)

**Or has failed to implement...**

- An Intermediate School District (ISD) plan
- Decision by an Administrative Law Judge (due process hearing)





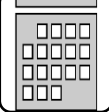
**State complaint issues related to:**

- Free Appropriate Public Education (FAPE)
- IEP
- Evaluation
- Discipline

# What is a Due Process Complaint?

**Initiated by a parent or “public agency” on matters related to violations of IDEA or MARSE**

- Identification
- Evaluation
- Educational placement of a student with a disability
- The provision of a free appropriate public education (FAPE) to a student with a disability
- Appeal of the district’s Manifestation Determination Review (MDR) decision

	45 Days after resolution session
	Decision by Administrative Law Judge (ALJ)
	Filed within 2 year of alleged violation

# FAPE in the LRE

“Do the best you can until you know better. When you know better, do better.”

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**Maya Angelou**

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# We are here to support you!

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En Español 313-217-1060

Statewide Email: [info@michiganallianceforfamilies.org](mailto:info@michiganallianceforfamilies.org)



# Michigan Alliance for Families

Michigan Alliance for Families is an IDEA Grant Funded Initiative of the Michigan Department of Education, Office of Special Education, and Michigan's federal Parent-Training and Information Center (PTIC) funded by U.S. Department of Education, Office of Special Education Programs (OSEP).

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