

Protecting Individual Rights in Behavior Intervention Planning

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Presenter



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Important Notes

- Indiana Disability Rights (IDR) is the state's congressionally mandated protection and advocacy service.
- Be comfortable and please engage. Questions are welcome.



Legal Frameworks

- The Individuals with Disabilities Education Act (IDEA)
- Section 504 of the Rehabilitation Act of 1973
- Free Appropriate Public Education (FAPE)



Key Definitions

A **FAPE** ... includes both “special education” and “related services.”

Special education is “specially designed instruction ... to meet the unique needs of a child with a disability”

Related services are support services “required to assist a child ... to benefit from” that instruction.

Endrew F. v. Douglas County School District RE-1, 580 U.S. 386, 390 (2017)



Presentation Overview

- Individualized Education Plans (IEPs)
- Least Restrictive Environment (LRE)
- Behavior Intervention Plans (BIPs)
- Informed Consent



IEPs



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The IEP's Role

The IEP is “the centerpiece of the [IDEA’s] education delivery system for disabled children.” It “is the means by which special education and related services are “tailored to the unique needs” of a particular child.

Endrew F. v. Douglas County School District RE-1, 580 U.S. 386, 391 (2017)



IEPs Enable Student Progress

A school “must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

Endrew F. v. Douglas County School District RE-1, 580 U.S. 386, 391 (2017)



IEP Individualization

“The IEP must aim to enable the child to make progress The instruction offered must be ‘specially designed’ to meet a child’s ‘unique needs’....” (p. 11)

“The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” (p. 15)



The LRE



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The Power of Inclusion

“The Least Restrictive Environment (LRE) is a foundational element of the IDEA. It mandates that students with disabilities should be educated with their non-disabled peers as much as possible, receiving the support they need within the general education setting before considering more restrictive alternatives.”

The Power of Inclusion: How to Advocate for the Least Restrictive Environment (LRE). Adriane Gay. LinkedIn. Accessed September 27, 2024. <https://www.linkedin.com/pulse/power-inclusion-how-advocate-least-restrictive-environment-gay-j8xje/>



LRE Basics

- The LRE is the setting where a child with a disability can receive a FAPE that meets his or her needs, alongside peers without disabilities, to the maximum extent possible.
- The IDEA expresses a strong preference, but not a mandate, for educating children with disabilities in regular classes alongside their peers without disabilities.



LRE Requirements

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;¹ 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.²



LREs and Student Needs

“The LRE is not just a specific place or self-contained classroom, but about what works best for students.”

– Sharon Schultz, education consultant and former teacher

Maximizing Student Success with Least Restrictive Environments and Appropriate Models of Inclusion. Edward Graham, NEA News, neaToday, May 12, 2022. Web. <https://www.nea.org/nea-today/all-news-articles/maximizing-student-success-least-restrictive-environments-and-appropriate-models-inclusion>



Removal from General Education

A child can only be removed from a general education class if the child can't be “satisfactorily educated” in the general education setting with the use of supplementary aids and services.



Key LRE Terms and Definitions



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Regular Educational Environment

Regular Educational Environment: Includes regular classrooms, cafeterias, playgrounds, gymnasiums and other school settings in which children without disabilities participate.



Satisfactorily Educated

Satisfactorily Educated: The IEP team determines what “satisfactorily educated” means for each student; no statutory floor exists.



Supplementary Aids and Services

Supplementary Aids and Services: 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.



Supplementary Aids and Services

Are intended to enable a child with a disability to be educated in regular classes with nondisabled children to the maximum extent appropriate.



Supplementary Aids and Services

If the IEP team has determined that the child can be satisfactorily educated in the regular classroom with the support of supplementary aids or services, those aids or services must be specified in the child's IEP and provided to the child. Placement decisions must be based on the individual needs of each child with a disability. Therefore, school systems must not make decisions based on their needs or available resources, including budgetary considerations and the ability of the school system to hire and recruit qualified staff.



Supplemental Service Examples

- Extra time to take tests or complete assignments
- Shorter or different assignments
- More frequent feedback
- Slower-paced instruction
- Physical adaptations
- A note-taker or other assistant
- A set of class materials to use at home
- Preferential seating
- Digital/electronic class materials
- Use of computer for certain assignments
- Alternative instruction (e.g., mode of presentation, pace, or difficulty)

Considering LRE in Placement Decisions. Center for Parent Information & Resources, April 2021.
Web. <https://www.parentcenterhub.org/placement-lre/>



Harmful Effects

When the IEP team selects a student's LRE, it must consider any potential harmful effects on the child.

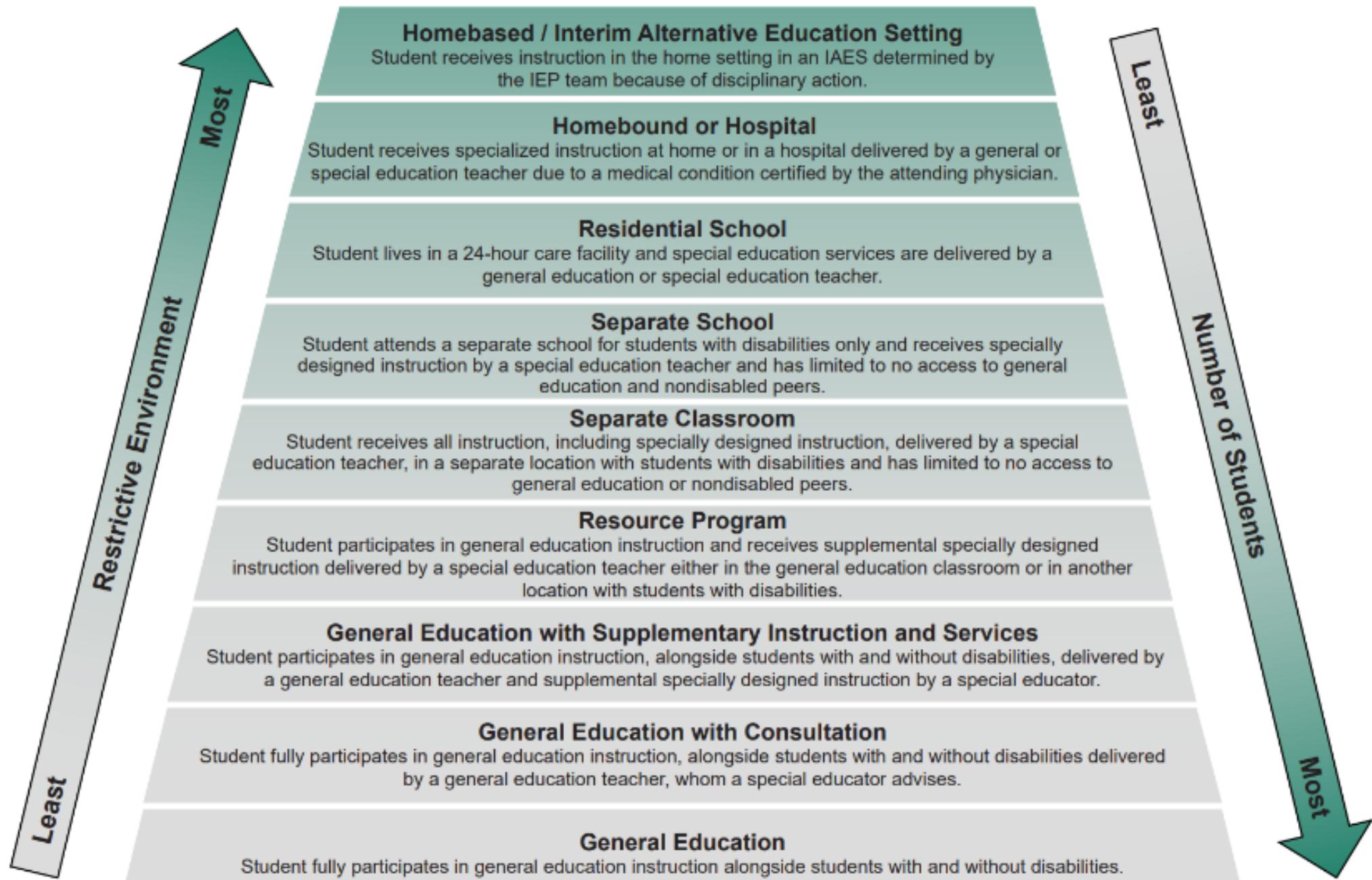


Continuum of Alternative Placements

- (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.”¹

¹ 34 CFR § 300.115





Least Restrictive Environment (LRE) Continuum (Michigan Department of Education, Office of Special Education)

Informed Consent



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Consent Defined (1 of 2)

Consent means that—

- (a)** The parent¹ has been fully informed of all information relevant to the activity for which consent² is sought, in his or her native language, or through another mode of communication;
- (b)** The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and



Consent Defined (2 of 2)

(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(c)(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(c)(3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records⁴ to remove any references to the child's receipt of special education and related services because of the revocation of consent.²



A School Must Obtain Consent Before...

- Conducting an initial evaluation
- Conducting a re-evaluation
- Providing special education services for the first time
- Inviting representatives from other agencies to participate in IEP team transition meetings



Consideration of Special Factors

If a child's behavior impedes their own learning or that of others, the IEP team must consider using positive behavioral interventions and supports, and other strategies, to address that behavior.



Behavior Intervention Plans (BIPs)



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BIP Basics (1 of 4)

A BIP is a written improvement plan created for a student based on the outcome of their functional behavior assessment (FBA).



BIP Basics (2 of 4)

BIPs identify proactive, individualized strategies to reduce or replace challenging behaviors by teaching alternative, appropriate skills.



BIP Basics (3 of 4)

The BIP development process is led by the IEP team, including the student, their parents, teachers, and support staff.



BIP Basics (4 of 4)

A BIP is not a punishment but an individualized plan for success with more intensive supports and oversight.



The FBA

The FBA should identify what is maintaining or causing a challenging behavior, and the BIP specifies the actions to take to improve or replace the behavior.



BIP Components

- What is happening?
- Why is it happening?
- How to replace the behavior?



Potential BIP Recommendations

Changes to:

- Instruction methods
- Types of support and/or intervention
- The educational environment



Manifestation Determination Review (MDR)

If a student is removed from school for more than 10 days and exhibits a behavior that the IEP team determines was a manifestation of the student's disability, the IDEA requires the IEP team to conduct a FBA and implement a BIP if one is not already in place.



Practical Tips for BIPs



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Complete an FBA before a BIP

Before a BIP can be developed, an FBA must be completed. At minimum, an observation and questionnaire should be completed by the staff working with the student and parent/guardian.



Involve the Student

- The student should attend the meeting to help develop their BIP. If age or disability prohibits their participation, the parent/guardian must be their voice. Please remember that an outside therapist might be very helpful in this process.
- When a student helps develop the BIP, their input should be given full consideration.



Communicating the BIP to the Student

If the student does not help develop their BIP, a trusted teacher and/or parent will need to review the BIP with the student and give examples about following its steps.



The BIP is Not Punishment

- Ensure the student knows that the BIP is a tool to help, rather than punish, them.
- Make sure the student understands all the steps and give the student choices. (E.g., “If you choose “X” behavior, then “Y” intervention will happen.)
- Make sure there is more than one trusted school staff member with whom the student can talk when upset.
 - NOTE: School Resource Officers should generally only assist when a student is endangering themselves or others.



The BIP Protects the Student

- The BIP should ensure that the student's dignity and well-being are protected, and that the student is free from abuse and neglect.
- The BIP should be within the LRE.
- School staff and the student should be proactive and use interventions and strategies before behavior escalates.



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