

# Special Education: FAPE & Other Critical Issues

**SPALS CONFERENCE**  
October 18, 2024

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## Participant Objectives:

- Participants will be able to explain the key provisions of the Individuals with Disabilities Education Act (IDEA) and how it applies to speech-language pathology and audiology services in schools.
- Participants will demonstrate knowledge of the legal requirements for developing and implementing Individualized Education Programs (IEPs) under IDEA.
- Participants will be able to conduct comprehensive assessments to identify students with speech, language, and hearing impairments, ensuring alignment with IDEA criteria.
- Participants will develop strategies for effectively collaborating with teachers, parents, and other educational professionals to support the communication and auditory needs of students.
- Participants will identify and apply ethical principles in advocating for the communication and hearing needs of students, ensuring that all students receive appropriate services under IDEA.
- Participants will analyze case studies to practice making informed decisions on adjusting IEPs and services based on student progress.
- Participants will evaluate scenarios where they must advocate for a student's needs within the school setting, ensuring compliance with IDEA and best practices.

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## History of Special Education—

- **Congressional Investigation (1972)** After *PARC* and *Mills*, Congress launched an investigation into the status of students with disabilities and found that millions of children were not receiving an appropriate education.
- **Rehabilitation Act of 1973 (504)** Section 504 of the Rehabilitation Act of 1973 guaranteed civil rights for the disabled in the context of federally funded institutions or any program or activity receiving Federal financial assistance.
- **Education for All Handicapped Children's Act of 1975 (EHA)** In 1975, the Congress enacted Public Law 94-142 to:
  - To assure that all children with disabilities receive a free appropriate public education emphasizing special education and related services designed to meet their unique needs
  - To protect the rights of children with disabilities and their parents
  - To help state and local education agencies provide for the education of all children with disabilities
  - To assess and assure the effectiveness of efforts to educate all children with disabilities

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## History of Special Education—

**Americans with Disabilities Act of 1990 (ADA)**  
The Civil Rights Act of 1964 provided citizens protections from discrimination; similarly the ADA barred discrimination against individuals with identified disabilities in:



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## History of Special Education—

### **Individuals with Disabilities Education Act of 1997 (IDEA)**

Congress enacted IDEA with the express purpose of addressing implementation problems resulting from "low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities." 20 U.S.C. § 1400(c)(4). The statute clearly stated its commitment to "our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities." 20 U.S.C. § 1400(c)(1).

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## History of Special Education—

*Children with Exceptionalities Act—La. R.S. 17:1941, et seq.*  
La. R.S. 17:1942. Definitions.

B. A "student with an exceptionality", including **a student with a disability**, is any student who is **evaluated** according to state and federal regulation or policy and **is deemed to have** a mental disability, hearing loss (including deafness), multiple disabilities, deaf-blindness, speech or language impairment, visual impairment (including blindness), emotional disturbance, orthopedic impairment, other health impairment, specific learning disability, traumatic brain injury, autism, **or is deemed to be gifted or talented**, and **as a result requires special education and related services**. A student with an exceptionality may include, as determined by the local education agency, a student experiencing developmental delay ages three through eight. (emphasis added)

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## History of Special Education—

(Bulletin 1706)  
Regulations for  
Implementation  
of the Children  
with  
Exceptionalities  
Act—LAC  
28:XLIII.1706

• **Special Education** is specially designed instruction\*, at no cost to the parent, to meet the unique needs of the student with a disability, including: instruction conducted in the classroom, in the home, in hospitals and institutions, in other settings, and includes physical education. [adapting, as appropriate to the needs of an eligible student under these regulations, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students.]

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## History of Special Education—

(Bulletin 1706)  
Regulations for  
Implementation  
of the Children  
with  
Exceptionalities  
Act—LAC  
28:XLIII.1706

• **Related Services** is transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education, and includes speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

• **Supplementary Aids and Services** are aids, services, and other supports that are provided in regular education classes or other education-related settings and in extracurricular and non-academic settings to enable students with disabilities to be educated with non-disabled students to the maximum extent appropriate.

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## Special Education—SPALS Professionals

What is FAPE?

**Free Appropriate Public Education**  
and it means special education and related services that:

- (1) Are provided at **public expense, under public supervision and direction**, and without charge;
- (2) **Meet the standards of the State Educational Agency**, including the requirements of Part B of the IDEA;
- (3) Include an **appropriate preschool, elementary school, or secondary school education** in the State involved; and
- (4) Are provided **in conformity with an IEP that meets IDEA requirements**.

34 CFR § 300.17 (emphasis added)

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## Special Education—SPALS Professionals

Purposes of the IDEA:

- **Ensure FAPE** to meet **unique needs** and **prepare for further education, employment, and independent living**;
- Ensure **rights** of parents and students are protected;
- Assist States, LEAs and Federal agencies to provide for the education of students with disabilities; and
- **Assess and ensure** the **effectiveness** of efforts to educate children with disabilities.

34 CFR § 300.1 (emphasis added)

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## Special Education—SPALS Professionals

**The Legal Threshold for FAPE: U.S. Supreme Court**

- **Rowley** (1982) standards:
  1. Procedural: follow the process
  2. Substantive: reasonably calculated IEP
- **Endrew F.** (2017) – reiteration/restatement of *Rowley's* substantive standard:  
 “reasonably calculated to enable a child to make progress appropriate *in light of the child's circumstances.*”

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**The Legal Threshold for FAPE: *La. Federal Courts***

- ***Cypress-Fairbanks (or “Michael F.”) Standard***
  1. Individualized
  2. Least Restrictive Environment (LRE)
  3. Coordination/Collaboration
  4. Academic and Nonacademic Progress

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**(1) Individualized Based on Assessment and Performance**

- Focus on individual student **performance** (current)
- Requires active and ongoing **monitoring**
- Progress monitoring and **analysis of data vital** to development and revisions to IEP (use of individual student info to inform IEP planning)

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**(2) Least Restrictive Environment**

- Participation **with non-disabled peers** to **maximum extent “appropriate”**

“Placement decisions for exceptional students must be made in accordance with the least restrictive environment requirements of state and federal laws.”

Bulletin 1566, § 501(C)

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**(3) Coordination and Collaboration**

- Regular education teacher involvement
- Each service provider **understands** and is **capable of executing** their responsibilities
- Administrative supervision
- **Full knowledge of IEP by each service provider**
- Staff training
- On-going **joint planning and assessment**
- **Communication!**

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**(4) Positive Academic and Non-Academic Gains Demonstrated**

- Educational benefit includes **non-academic benefit**
- **IEP implemented with fidelity**
- Grades not necessarily indicator of meaningful benefit
- Gains in *all* academic and non-academic areas *not* required
- **Documentation!**

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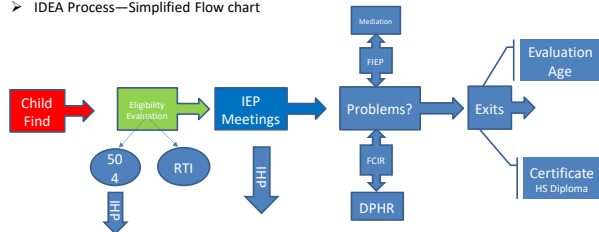
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➤ IDEA Process—Simplified Flow chart



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## Special Education—SPALS Professionals

### ➤ Child Find =

- an LEA's *affirmative* duty to locate, identify, and evaluate students within its jurisdiction who are suspected of having a disability
- duty is triggered when the LEA learns there is a reason to suspect the student has a disability and needs special education
- duty includes looking for red flags

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## Special Education—SPALS Professionals

### ➤ Evaluations =

- parents or school staff members (teachers, paras, nurses, etc.) may request an evaluation for a student suspected of having a disability [Child Find]
- evaluation required to be completed within 60 business days after LEA receives parent's informed, written consent to evaluate\*
- must be completed by qualified professionals & comply with LDOE regulations\*
- an initial evaluation is considered "completed" when the written report has been disseminated by the pupil appraisal staff to the administrator of special education programs. An LEA has a maximum of 30 calendar days to complete the IEP/placement document for an eligible student\*

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## Special Education—SPALS Professionals

### ➤ Eligibility =

- IDEA—SBLC or a similar group of qualified professionals must meet with the parents in an evaluation meeting to review the results that determine whether the student meets the definition of a *student with a disability* and is eligible to receive special education and related services
- if yes—the LEA evaluator(s) must have determined the student meets the IDEA's or LDOE regulation's definition of *student with a disability*—
- if no—
  - the student may qualify for individual disability accommodations/modifications under §504/ADA using an IAP
  - the student may be technically eligible under §504 or may simply need an IHP

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## Special Education—SPALS Professionals

- **Eligibility =**
- when *after being evaluated* according to LDE regulations and is *classified as or determined as having*
    - an intellectual disability
    - a visual impairment (incl. blindness)
    - an orthopedic impairment
    - traumatic brain injury
    - a specific learning disability (SLD)
    - deaf-blindness or
    - a **speech or language impairment**
    - a serious emotional disturbance (ED)
    - autism
    - an other health impairment (OHI)
    - **hearing disabilities**
    - multiple disabilities, and
  - who as *a result of that disability needs special education and related services*

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## Special Education—SPALS Professionals

### Bulletin 1508 Pupil Appraisal

#### §107. Qualified Examiners

A. The Individuals with Disabilities Education Act (IDEA) and Louisiana Revised Statutes 17:1941 et seq., require that a student suspected of being exceptional receive a comprehensive multidisciplinary evaluation conducted by qualified examiners. Qualified examiners include pupil appraisal professionals certified by the state Department of Education and professionals from other agencies or in private practice, as described in this Section.

1. Professional members of a pupil appraisal system include certified Assessment Teachers/Educational Consultants/Educational Diagnosticians, Certified School Psychologists, Qualified School Social Workers; Speech/Language Pathologists, Adapted Physical Education Teachers; Audiologists; Certified School Nurses, Occupational Therapists, Physical Therapists, Speech and Hearing Therapists, and Speech/Hearing/Language Specialists.

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## Special Education—SPALS Professionals

- **IEPs: Meetings, Preparation, & Implementation =**
- IEP is the vehicle used by the LEA to provide the student FAPE
  - Three types of IEP meetings: *Initial, Review and Interim*
  - Many regulations: notice, frequency, required attendees, format
- **IAPs: Meetings, Preparation, & Implementation =**
- An IAP is developed to ensure that a child who has a disability identified under the law and is attending an elementary or secondary school receives accommodations that will aid their academic success and provide access to the learning environment
  - §504 regulations do not have a list of mandatory attendees for an IAP meeting but key staff should attend, student's teachers, principal, SLP, etc.
  - Not as many regulations: no mandatory §504 plan format or content, meeting notice requirements, mandated plan review frequency, "periodic" reevaluation

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## Special Education—SPALS Professionals

### Bulletin 1530 §309. Related Services Considerations

2. The IEP Team shall consider each related service that is recommended on the evaluation reports and document and the decisions on the IEP form. For example, the team shall:

- a. list all services recommended by the team and the service provision schedules, dates, and location, etc.;
- b. explain the team's decisions not to include a recommended related service;
- c. explain delays in providing any related service listed on the IEP.
  - i. This delay, or hardship, in no way relieves a LEA from providing the service and from documenting every effort to provide it in a timely manner.
- d. The participation of related service personnel is extremely important during the IEP Team meeting. Involvement should be through either direct participation or written recommendations.

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## Special Education—SPALS Professionals

### Regulatory Responsibilities\*

#### Bulletin 1508

- ✓ §305. Screening Activities
  - ✓ Hearing Screening
  - ✓ Speech and Language Screening
- ✓ §709. Deaf and/or Hard of Hearing
- ✓ §721. Speech or Language Impairment
- ✓ §1515. Speech-Language Pathology Services

#### Title 46 Professional Standards

- ✓ §121. Duties: Speech-Language Pathology Assistant License and Provisional Speech-Language Pathology Assistant License
- ✓ §137. Hearing Aid Dispensing

\*non-exclusive

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## Special Education—SPALS Professionals

**QUESTIONS?**

**BREAK**

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**WHICH APPLY TO FAPE?**

- IDEA
- Section 504
- ADA/ADAAA (Title II)
- ESSA

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**WHICH APPLY TO FAPE?**

**All of them!**

**These laws must be read together.**

- IDEA
- Section 504
- ADA/ADAAA (Title II)
- ESSA

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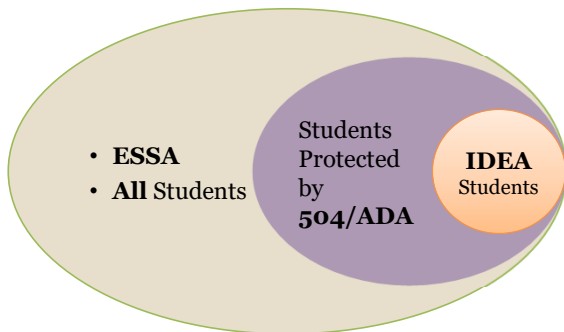
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HSA GNP Special Education—SPALS Professionals

True  
 False

**THE IEP IS  
A FORM  
DOCUMENT.**

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HSA GNP Special Education—SPALS Professionals

True  
 False

**THE IEP IS NOT  
A FORM DOCUMENT.  
THE IEP IS A PROCESS  
(that results in a substantive  
document).**

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HSA GNP Special Education—SPALS Professionals

**“An IEP is not a form document.** It is constructed only after careful consideration of the **child’s present levels of achievement,** disability, and potential for growth. §§1414(d)(1)(A)(i)(I)–(IV),(d)(3)(A)(i)–(iv).”

*Andrew F. v. Douglas County School District, 137 S. Ct. 988, 2017 WL 1066260 (USC 2017).*

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**Present Levels of Academic Achievement and Functional Performance (PLAAFP) (formerly PLOP)**



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**PLAAFP – Determine which data is important now**

**Academic?**

- Grades, Test Scores
- Skill-specific data
- Use of accommodations

**Behavioral?**

- Discipline documentation
- Evidence of responsibility
- Evidence of social skills
- Organizational skills

**Functional?**

- Personal Care
- Employability skills
- Independent Living skills



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**PLAAFP Essential Elements:**

- **FIRST data point** in charting progress toward the target
- **Baseline data** reflective of student performance in relationship to critical need
- **Prioritized** Critical Need
- **Clear statement** about how the student’s disability affects involvement and performance in this area



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**You be the Judge – PLAAFP Essential Elements ?**

***B.J. is a 3<sup>rd</sup> grader who has difficulties with language.***

- What are the difficulties ?**
- What can he do/not do ?**
- Can you identify the baseline ?**

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Special Education—SPALS Professionals

**You be the Judge – PLAAFP Essential Elements ?**

***Koby dislikes school and his teachers. He violates rules. He refuses to take any responsibility for his actions.***

- What does “dislikes school” look like ?**
- What does “a refusal to take responsibility” look like ?**
- What rules did Daniel violate ?**
- Can you identify the baseline ?**

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**Determining Educational Needs Based on PLAAFP**

- Difference between the expected outcomes and present level (gap analysis)
- Based on a data-based hypothesis of the reason for the difficulty
- Include academic and functional performance

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HSA GNP Special Education—SPALS Professionals

True  
 False 

**STANDARDS-BASED IEPs ARE  
REQUIRED FOR ALL  
STUDENTS WITH  
DISABILITIES.**

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HSA GNP Special Education—SPALS Professionals

True  
 False 

**Yes. An IEP for an eligible child with a disability under IDEA must be aligned with the State's academic content standards for the grade in which the child is enrolled.**

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HSA GNP Special Education—SPALS Professionals

**FAPE**  
**OSERS Dear Colleague Letter (Nov. 16, 2015)**

- Reminder that students with disabilities must **address content standards for grade in which student is enrolled**
- Stresses IEP Team responsibility for **standards-based IEPs**
- Alternate standards must be aligned with grade-level content standards

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Special Education—SPALS Professionals

**Does a Standards-Based IEP Mean the Student must be on Grade Level ?**

**NO**

The student may not be on grade level in the content area.

However, the student must be provided the **opportunity** to access grade-level **content** and work toward meeting grade-level expectations.

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**Unpacking Grade Level Standards**

5th grade student reads at a 2nd grade level.

*5<sup>th</sup> Grade Standard: 5.2 Determine two or more **main ideas of a text** and explain how they are supported by key details; summarize the text.*

*2<sup>nd</sup> Grade Standard: RI.2.2 Identify the **main topic** of a multi-paragraph text as well as the focus of specific paragraphs within the text.*

**Address the skill through the use of 2nd grade level materials. At the same time, you continue to work on the student’s fluency and decoding skills.**

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Special Education—SPALS Professionals

**Goals Should Focus on ACTIVE Participation**

Which goal is better?

**PJ will accompany a peer to buy lunch.**

Or

**PJ will ask a peer to help him buy lunch by using the “help me pay” symbol on his AAC device.**

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### You be the Judge – Goal #1

Is it measurable? How can it be improved?

Student will read CVC words with 47% accuracy.



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### You be the Judge – Goal #1

- Given a list of no more than # CVC words, student will repeat the word, identifying the beginning, middle and end sounds, with % accuracy in X of X trials.



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### You be the Judge – Goal #2

Is it measurable?

Student will increase their ability to engage in collaborative discussions by holding a reciprocal conversation on a topic, a topic that is preferred/not preferred, with 2 or less deviations from the topic, on 8 out of 10 opportunities.



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**Why Progress Monitoring ?**



**IT'S REQUIRED UNDER FEDERAL  
& STATE LAW**

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**Why Progress Monitoring ?**



- To assess each student's academic performance on a regular basis
- To document student progress for accountability purposes
- To communicate with parents or other professionals about student progress

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**Evaluating Effectiveness**



- What does the collected data (student-specific information) show about the student's skill growth towards the goal?
- How will the student's education program be maintained/changed/adjusted based upon this information?

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**You be the Judge – Least Restrictive Environment?**

*B.J. is a 1<sup>st</sup> grader with mild articulation issues. His teacher is new and is having difficulty managing his behavior. He is placed in a special education classroom primarily for students with more severe disabilities.*

**Is B.J. in the LRE?  
What accommodations can be added to support B.J.?  
Is something else needed?**

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- True
- False



**COORDINATION & COLLABORATION  
WITH REGULAR EDUCATION IS A  
LEGAL MANDATE.**

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**Coordination and Collaboration**

- Regular education teacher involvement
- Staff training
- Communication

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**Coordination and Collaboration**

- Provide information about students' speech or language impairments.
- Provide strategies to support student instruction.
- Provide insight into what the student is working on in therapy.

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- True
- False

**Parental requests must be included in IEP.**

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***Parents play a critical role in the IEP process. They have the right to:***

- Be informed
- Participate
- Access records
- Provide consent\*
- Dispute decisions\*
- Receive translation and interpretation services if needed

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**Andrew F. and the importance of appropriately articulating IEP-based decisions (to parents)**

“By the time any dispute reaches court, school authorities will have had the chance to bring their expertise and judgment to bear on areas of disagreement. ... At that point, *a reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions* that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.”

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**Positive Academic and Nonacademic Progress**

“significant learning” to confer “meaningful benefit”

- What does progress look like?
- progress monitoring
- continuation and adjusting of services
- Data to support changes

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**Case Study**

Alan is a 5<sup>th</sup> grade student eligible for special education services under the categories of autism, speech impairment in the areas of receptive and pragmatic language, and specific learning disability (SLD) in the areas of math calculation, math problem solving. He has been receiving speech-language services 2x/week for 30 minutes. Student requires specialized instruction and methodology in small groups outside the general education classroom for math. He missed a few weeks of school due to the flu and the death of a close family member. He was recently involved in an altercation with student in the hall after the student made a joke that Alan misinterpreted.

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## Special Education—SPALS Professionals

### Bottom Line

- MUST consider the IEP development process in light of IDEA, ESSA, Section 504, the ADA, and . . . *Andrew F.*
- Don't forget any additional LDE considerations (e.g., April Dunn Act).
- **Present Levels of Performance** set the stage for the rest of the IEP.
- Be prepared to provide a "cogent, responsive explanation" for decision-making based on data.
- Follow the *Cypress-Fairbanks* factors carefully.

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