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Examining the Research Base and Legal Considerations in Special Education

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DISABILITY LEGISLATION

Legislation has changed the way society thinks about disabilities and has also driven research to find better ways for schools to deliver appropriate services to children in the least restrictive environment. Basically, students have rights to a free, appropriate public education that addresses their diverse needs. Teachers must understand what legislation and research say about students with differing abilities in regard to the curriculum, instruction, assessment, and daily living skills. In addition, there is thankfully now a huge emphasis upon improving both the academic and functional outcomes of students with disabilities with research-based interventions. Legislative information, standards-based reforms, and strategic research about disabilities are detailed in this chapter, along with the reasons why we need to do inclusion.

INTRODUCTION: WHY DO INCLUSION?

Affective Comparison

Directions: Think of a time when you were excluded from an academic or social activity as a child or an adult. List the emotions you experienced as a result of this exclusion. Contrast this experience with a time when you were included or allowed to participate with others, and list those emotions as well under the appropriate heading.

Inclusion Versus Exclusion	
Inclusion	Exclusion

The primary reason for inclusion is the list of positive inclusive emotions. The Latin root of inclusion is *includo*, meaning to embrace, while the Latin root of exclusion is *excludo*, meaning to separate or shut out. Unfortunately, in the beginning haste to include students, administrators in some school districts created the impression that inclusion is just a way to save money, with the unintended outcome that it only burdens teachers. All educational players now realize that inclusion will not succeed without the proper scaffolding. Most teachers are skeptical because there is no script or template to follow for inclusion. Even though inclusion has been in the forefront for a while, it is still in its infancy and will continually evolve. Simply stated, inclusion is a way of life and a preparation for adulthood. It supports the civil rights of all learners. Inclusion may not be the most appropriate placement to meet all students' needs, yet it should be considered as the first viable option. Now think of teaching a student who has similar exclusionary emotions to the ones you listed under the Exclusion column, and how he or she would feel about school. How could you learn, if you were experiencing these exclusionary emotions?

Any moral here???

ESTABLISHING LEGISLATIVE KNOWLEDGE

Courting Issues

Laws were designed to protect people with disabilities by giving them access to the same societal opportunities as those accessible to people without disabilities. Segueing to a more detailed examination of the special education laws and research, answer the following "true or false" questions.

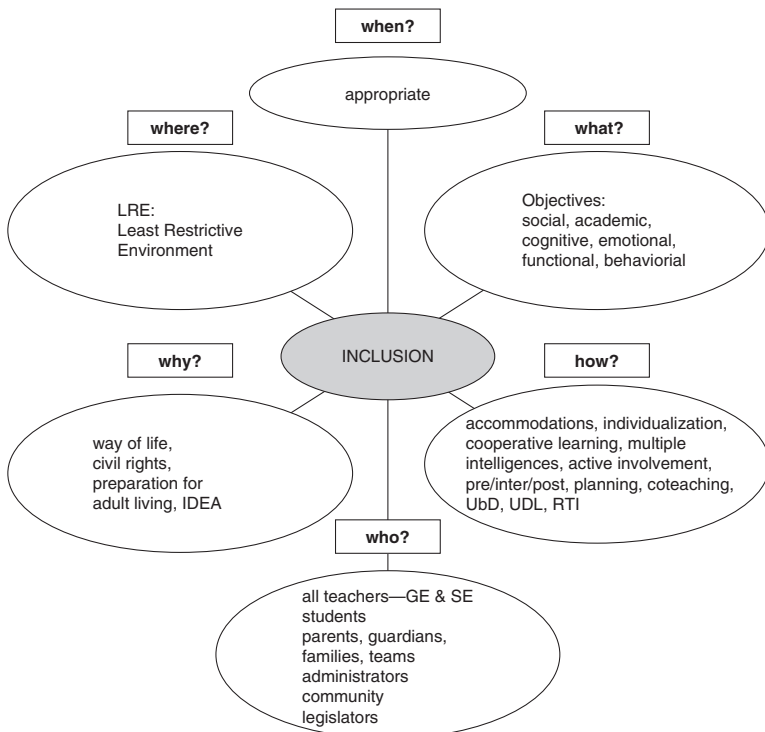
True or False?

- ___ 1. Eighteen percent of the school-age population has a disability.
- ___ 2. Cooperative learning is a competitive teaching strategy.
- ___ 3. Right angles of learning refers to measuring the classroom.
- ___ 4. About 5–6% of the school-age population has a learning disability (LD).

- ___ 5. Section 504 of the Rehabilitation Act has been in effect since 1983.
- ___ 6. FAPE stands for Federally Approved Programs for Education.
- ___ 7. IDEA is an educational program that protects children ages 5 to 21.
- ___ 8. Teachers can call for a new IEP meeting anytime they need additional support.
- ___ 9. A student who is not classified can be considered for Section 504 protection.
- ___ 10. There are 13 specific disability categories under IDEA for students from ages 3 to 21.
- ___ 11. ADA protects individuals with physical or mental impairments that may limit a major life activity.
- ___ 12. People with mental retardation, e.g., developmental or cognitive disabilities, or intellectual impairments, are more likely to have children who are also cognitively impaired. (The term *mental retardation* has a negative connotation and should be avoided, even though it is still a formal classification under IDEA.)

Inclusion Web

Special education laws demand that the general education classroom be looked at as the first placement option and the least restrictive environment for students with disabilities. The web below outlines more inclusive particulars about inclusion.



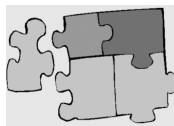
The “true or false” activity might have been frustrating if you did not have background knowledge about special education or the laws. Compare it to the spelling pretest given to students who have no prior knowledge of the words. Teachers sometimes begin a content area, assuming children have prior knowledge.

Moral: All students do not have the same background knowledge or experience. Learning should be at an optimum, while frustrations are kept at a minimum since they only interfere with and thwart the learning process. Ascertaining what students know before the lesson proceeds then helps to guide instruction. (See page 5 for answers to the true or false statements.)

Research about cooperative learning affirms that it confers both social and academic advantages (Jenkins, Antil, Wayne, & Vadasy, 2003; D. Johnson & Johnson, 1975; Kagan, 1994; Slavin, 1990). Socially, positive interactions increase as students work collaboratively toward a common goal. Academically, students are willing to spend more time learning from each other rather than from the teacher, resulting in better products with often challenging curricula. Cooperative communication also bridges schools to adulthood, since it is a prerequisite for future employment relationships. Getting along with others is a skill that schools can foster through cooperative learning. Team skills, increased self-esteem, improved peer interaction, and higher task completion with learning assignments are some of the benefits that are yielded when structured cooperative groups heterogeneously work together in classrooms. Overall, cooperation is a functional skill for educators and peers in inclusive classrooms to repeatedly foster and model.

Special education (SE) services are provided without cost to the students and families under all three laws of IDEA, ADA, and Section 504, with the least restrictive environment being the first option unless the severity of the disability prohibits that placement. The intention of this next legislative review is to increase the knowledge of SE laws and to *walk the cooperative talk*.

Jigsawing Reading



To review the basic terminology and legislation in the field of special education, cooperative groups equitably divide the legislative readings on the following pages to collectively share knowledge and then answer 6 out of 10 listed questions under the heading Cooperative Legislative Review. This jigsaw technique is a cooperative learning strategy, where teachers direct students to learn and share content with each other. Having choices of which questions to answer empowers the student under the teacher’s auspices. Teachers monitor learners and drift to different groups, clarifying questions and concerns, while addressing individual and group thought processes. The following readings summarize pertinent facts about legislation, along with past/present/future concerns about special education and the rights of people with disabilities.

Cooperative Division

1. Everyone reads the IEP/ADA/504 comparison.

Then, equitably divide the following:

2. Details about the least restrictive environment
3. Description of 13 disability categories under IDEA
4. History of the ADA
5. Civil rights for people with disabilities
6. Past, present, and future concerns

Answers to true/false

1. F—Approximately 9% of all children and youth ages 3–21
2. F—Noncompetitive
3. F—It’s a hierarchy of learning objectives.
4. T—Students falling under the LD category vary from state to state, e.g., low of 2.2% in Kentucky, 7.7% in Iowa and Oklahoma.
5. F—1973
6. F—Free and Appropriate Public Education
7. F—Ages 3 to 21 (students with developmental delays from birth to age 3 are eligible for services under IDEA Part C, e.g., physical development, cognitive development, communication, social or emotional development, or adaptive [behavioral] development)
8. T
9. T—Examples include a child with asthma (staff trained to administer EpiPen), diabetes (glucose monitoring with trained personnel, access to water, bathroom), food allergies (safe snacks available), juvenile arthritis (word processor, scribe), AD/HD (modified schedule, homework decreased, reduced or minimized distractions). Review this site for more 504 ideas: <http://specialchildren.about.com/od/504s/qt/sample504.htm>.
10. T
11. T—Life activities include walking, speaking, working, learning, caring for oneself, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating.
12. F—Children can be affected by the limitations, but their mother’s illnesses during pregnancy and use of drugs and alcohol are major contributors.

Sources:

- About.com: Special Needs Children, <http://specialchildren.about.com/od/504s/qt/sample504.htm>.
- Holler, R., & Zirkel, P. (2008). Section 504 and public schools: A national survey concerning “Section 504-only” students. *NASSP Bulletin*, 92(1), 19–43.
- IES National Center for Education Statistics: Participation in Education. (n.d.). *Indicator 8: Children and youth with disabilities*. Retrieved May 3, 2009, from <http://nces.ed.gov/programs/coe/2009/section1/indicator09.asp>.
- National Center for Educational Statistics (2003), Institute of Education Sciences, U.S. Dept. of Education. 1990 K Street, NW, Washington, DC 20006, (202) 502–7300, <http://www.nces.ed.gov>.
- National Center for Learning Disabilities, <http://www.nclld.org>, as cited in <http://www.ideadata.org>.
- National Dissemination Center for Children with Disabilities, <http://www.nichcy.org/Laws/IDEA/Pages/BuildingTheLegacy.aspx>.

<p>IDEA 1990 & Individuals with Disabilities Education Improvement Act (IDEIA 2004)</p>	<p>American with Disabilities Act of 1990 (ADA) Americans with Disabilities Act Amendments Act of 2008 (ADAAA)</p>	<p>Section 504 of the Rehabilitation Act of 1973/ Impact of ADAAA 2008</p>
<p>Children ages 3 to 21 with disabilities listed below are eligible for a free and appropriate public education in the least restrictive environment (LRE). IDEA is a statute that funds special education programs under the following categories:</p> <ul style="list-style-type: none"> • Autism • Deafness • Deafness–Blindness • Hearing Impairments • Mental Retardation • Multiple Disabilities • Orthopedic Impairments • Other Health Impairments • Emotional Disturbance • Specific Learning Disabilities • Speech or Language Impairments • Traumatic Brain Injury • Visual Impairments <p>States may choose to add a 14th category of developmental delay for students ages 3–9 who exhibit significant physical, cognitive, behavioral, emotional, or social differences in development, in comparison with children of the same age and for students from birth to age 3, under IDEA Part C.</p> <p>The IDEA defines an Individualized Education Program (IEP), which lists written statements of current academic and functional levels. Long-term and short-term objectives are required</p>	<p>Civil rights antidiscriminatory law that protects people with disabilities from discrimination in public services, if reasonable accommodations can be provided there by state and local governments</p> <p>Physical or mental impairment has to substantially limit one or more life activities (walking, breathing, seeing, hearing, speaking, learning, working, caring for oneself, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating)</p> <p>A word such as <i>concentrating</i> qualifies a student with attention issues such as a child who may have a diagnosis of AD/HD.</p> <p>Disability determinations are made without regard to mitigating measures, e.g., medication, appliances, medical supplies, low-vision devices (not eyeglasses or contacts), prosthetics, hearing aids, and mobility devices.</p> <p>Person must have a record and be regarded as having such an impairment. This does not include transitory or minor disabilities that have a duration of 6 months or less.</p> <p>Prevents employment discrimination against individuals with disabilities who meet other job qualifications</p>	<p>Civil rights law that stops discrimination against people with disabilities in public and private programs/activities that receive financial assistance</p> <p>Services under 504 protection include special education and general education with appropriate related services, accommodations, and aids.</p> <p>ADAAA extended more eligibility for K–12 students under Section 504. Before ADAAA, students with 504 plans comprised about 1.2% of national school-age children. That number is expected to increase, e.g., to incorporate those with AD/HD, diabetes, food allergies (Holler & Zirkel, 2008).</p> <p>Similar to IDEA, but can include students and staff of all ages who may not be covered under IDEA classifications</p> <p>Disability has to limit student’s ability to learn or perform other major life activities</p> <p>Students who use illegal drugs are not eligible for 504 plans.</p> <p>Lists mitigating measures, e.g., low vision (except contact lenses or eyeglasses), hearing aids, cochlear implants, assistive technology</p> <p>Includes reasonable accommodations and modifications</p>

IDEA 1990 & Individuals with Disabilities Education Improvement Act (IDEIA 2004)	American with Disabilities Act of 1990 (ADA) Americans with Disabilities Act Amendments Act of 2008 (ADAAA)	Section 504 of the Rehabilitation Act of 1973/ Impact of ADAAA 2008
<p>for students who take alternate assessments. Accommodations, modifications, and evaluation criteria are listed for each child.</p> <p>Present levels of academic achievement and functional performance are written in students' IEPs as snapshots of each child's current status and progress achieved. The word <i>functional</i> refers to routines of everyday living that are nonacademic, to better prepare students with disabilities for postschool adjustments.</p> <p>Implementation of early intervening services by LEAs (Local Education Agencies) to include professional development for educators and for related staff to deliver scientifically based academic and behavioral interventions, e.g., literacy, services, supports</p> <p>Limitation of related services for devices that are surgically implanted, e.g., cochlear implants</p> <p>Supplementary aids and services are provided in general education classes as well as extracurricular and nonacademic settings.</p> <p>IEPs are based on each child's individual and unique needs.</p>	<p>Helps to ensure public access to transportation and communication</p> <p>Can include special education students who are involved in community jobs or those people with disabilities visiting schools</p> <p>Can refer to private, nonsectarian schools</p> <p>OCR (Office of Civil Rights) enforces Title II of the ADA, which extends the prohibition against discrimination to public schools, whether or not they receive public funding.</p> <p>Expanded definition of <i>substantially limited</i> rather than mandating a <i>severe</i> or <i>significant</i> restriction</p> <p>The definition of <i>major life activities</i> says that the impairment only needs to limit one major activity in order to be considered as an ADA disability, although it may limit more as well.</p> <p>Amendments of ADA affect 504 plans in forms and procedures, increasing the eligibility of students in K-12 grades protected under Section 504.</p>	<p>Limited amount of money a school district can spend if the services are too costly, since unlike IDEA, there are no provisions that districts are reimbursed</p> <p>State and local jurisdictions are responsible.</p> <p>Requires a plan with a group that is knowledgeable about the unique needs of the student</p> <p>Specification of educational benefits, aids, services, class, and assessment modifications, e.g., reading test questions aloud, behavior intervention plans, preferential seating</p> <p>Periodic reevaluations</p> <p>Like IDEA, local education agencies must provide impartial hearings for parents who disagree with the identification, placement, or evaluation.</p> <p>Do not need both an IEP and a Section 504 plan, if student qualifies for services under both, since one way to meet 504 requirements is to comply with IDEA</p> <p>General education teachers must implement provisions of Section 504; their refusal would mean district can be found to be noncompliant.</p>

Least Restrictive Environments

According to IDEA, FAPE (free appropriate public education) must be provided in the least restrictive environment (LRE), which considers the general education classroom setting as the first option for academic and nonacademic benefits along with the effects of that placement on other children. Special education services are then linked to both academic and functional goals in what is then deemed as the LRE. The assumption under the law is that every child with a disability is educated in the general education classroom; if this is not the case, then the school district must provide documentation for why this should not occur.

A continuum of some alternative placements is determined on an individual basis with planning, interventions, and documentation of effectiveness merited in all environments. The LRE includes the following:

Least Restrictive Environment Options

- *General education classroom* with moderate support, e.g., consultation periods, in-class support by a special education teacher or other trained personnel for part of the day; or perhaps two teachers, general education (GE) and special education (SE), coteaching and coplanning lessons for all children in the classroom. The two teachers (GE+SE) may work together in an inclusion setting to help students with response to the curricula through strategic planning, specified interventions, and data that monitors ongoing benchmark assessments.
- *Pull-out programs* to support or replace some subjects that may be taught in a resource room. Academic subjects such as reading, language, science, social studies, or mathematics may be taught or supported in another setting within the school. The student fully participates in all other classroom content areas and activities with peers and follows the rest of the class schedule, with maximum social integration. This combination of services allows for periods of direct skill instruction, along with social and academic inclusion with peers.
- *Special education classroom* in a neighborhood school with the possibility of mainstreaming for certain subjects with academic and social goals delineated and adequate supports provided in the general education classroom and all settings. Special class placement can also be self-contained.
- *Special school* if education cannot be provided in the neighborhood school.
- *Home instruction* if the student's needs cannot be met in the school due to social, academic, physical, or medical issues.
- *Residential placement* that is provided in a setting other than the neighborhood school or home, which can include instruction in hospitals or residential institutions. Even though a placement such as a hospital is considered one of the most restricted environments, it may actually be the least restrictive setting for someone who may have a mental illness, if it is deemed the most appropriate one to service that individual's needs.

IDEA has four parts, with these inclusive elements:

Part A: General Provisions. This part includes purpose of special education law, definitions of terms, and congressional findings.

Part B: Assistance for Education of All Children with Disabilities. This part includes state formula grant program, eligibility, evaluations, IEP, funding, procedural safeguards, and preschool grants.

Part C: Infants and Toddlers with Disabilities. This part delineates early intervention programs for infants and toddlers with disabilities, along with findings and policies.

Part D: National Activities to Improve Education of Children with Disabilities. Included here are discretionary programs, state improvement grants, supporting and applying research, personnel preparation, parent training and information centers, technical assistance, technology development, and disseminating information.

When IDEA was reauthorized in 2004 as IDEIA, Individuals with Disabilities Education Improvement Act, major reauthorization points involved a focus on linking goals with academic and functional outcomes connected to research-based response to interventions (RTI). There was also an allowance to remove benchmarks and short-term objectives from a student's IEP unless that student is participating in an alternate assessment, e.g., usually a student with a severe cognitive impairment who responds markedly differently to stimuli, cannot solve problems, or has overall difficulties in communicating or providing a response. States may include benchmarks, but it is not federally mandated. Some states include benchmarks for subjects for which students are receiving replacement instruction, rather than the subjects where students have full inclusion, since the curriculum standards and objectives in the general education curriculum are then looked at as those students' goals. Overall, as with IDEA, parents, guardians, families, school personnel, and students are integral collaborative players in this process who must always consider and focus on matching all students' strengths with appropriate IEP services.

Some examples of appropriate services can include the following:

- Braille for a student with blindness or visual impairment
- Positive supports and intervention plans for a student with behavioral issues
- Communication and language supports for a student with deafness or hearing impairment; a student who is nonverbal; or a student who may have articulation, receptive, or expressive language needs
- Appropriate assistive technology services and devices *needed* by the student, though not always required by the district; e.g., a portable word processor or an instructional assistant serving as a scribe for a student with dysgraphia, although beneficial, may not be part of every school district's standard procedure
- Occupational or physical therapy for students with gross or fine motor needs, e.g., improvement with gait, balance, handwriting

As always, the present level of performance reflects how a child's disability impacts both his or her participation and progress in the general education curriculum. To qualify for services, a child's educational performance must be adversely affected as a result of the disability. The levels of academic achievement and functional performance are the crucial foundations for the development of the IEP, since they drive the appropriate services needed to address, improve, and remediate the impact of a disability on a student's performance. Families are notified of student

progress through periodic reports, e.g., quarterly intervals. Most important, IDEA 2004 directs IEP teams to implement instructional programs that have proven track records based on peer-reviewed research that gives merit to a program's effectiveness in both academic and behavioral domains. That means that schools are not arbitrarily using a program, but rather there is a research-based reason for that choice.

Appropriate accommodations for standardized assessments should not modify or alter test results, but provide valid assessments that truly yield information on what the test is intended to measure. Thus, appropriate testing accommodations may include but are not limited to extra time, smaller testing group, different format, or familiar examiner. If a child has an alternate assessment based upon academic achievement standards (AA-AAS), it most likely indicates that the grade-level curriculum is not appropriate, e.g., if the student has a severe cognitive disability. An alternate assessment based upon modified achievement standards (AA-MAS) is still aligned with grade level standards with some modifications such as simpler language, fewer choices, or even less clutter. The frequency, location, and duration of all services are stated in the IEP, indicating how often, where, and for how long the services should be given.

Supporting high-quality, intensive professional development for personnel who work with children with disabilities, including training related services personnel and paraprofessionals or instructional assistants, is essential. The use of technology to maximize accessibility for children with disabilities, e.g., NIMAS (National Instructional Material Accessibility Standards; see <http://nimas.cast.org>) provides accessible instructional materials such as digital textbooks. Braille or text-to-speech formats are mandated for those students who would require such services. Use of transition services within a results-oriented process to the maximum extent possible to facilitate movement from school to post-secondary activities includes further recommendations for continuing education, independent living, and community participation. Transitional plans are federally required at age 16, and offered earlier if warranted.

The overall philosophy is to help students with disabilities meet challenging state academic achievement standards and at the same time yield high functional achievements. Services for the homeless, foster children, children with disabilities in the military, and the needs of English language learners (ELLs) are also addressed. Reducing misidentification of children with disabilities by encouraging direct skill instruction is something that IDEA 2004 strongly advocates.

Highlights of IDEA 2004 include the following:

- Awarding attorney fees to local education agencies if parent's case is determined frivolous or improper based on legal precedents. Law is written in such a way as to put most of the liability on the parent's attorney for pursuing a frivolous suit. There is also a 2-year time limit to file, starting from the date the local educational agency (LEA) knew of the issue in question, with information kept confidential.
- With reference to learning disabilities, IDEA says discrepancy between achievement and intellectual ability is not the sole indicator for LD classification. It allows for a process that determines if the child is responding to classroom interventions (RTIs). This targets students who are functioning below classroom standards to receive help, even though no discernible discrepancy may be

revealed between tested intelligence and school performance. It focuses on early identification with assistance for early intervention services, without the specific determination of a learning disability. It includes monitoring, assessing, modifying classroom programs, and intervening, instead of referring students for automatic LD identification, giving merit to the provision of appropriate early intervention services in natural environments to meet the needs of individual children. RTI is implemented differently in many states, with a problem-solving approach that includes these overall three tiers of interventions:

1. Core (whole class) receives instruction and monitoring to determine needs and effectiveness of instruction
 2. Targeted (small groups) with students who need more strategic interventions identified
 3. Intensive (small groups, 1:1) for students with more chronic needs who require frequent monitoring of rigorous interventions
- Excusing IEP team members from attending meetings if all agree attendance is deemed unnecessary beforehand, with IEP team obtaining that member's input prior to the meeting, e.g., parent or guardian signs off with LEA agreement that the member's area of the curriculum or related services are not being modified or discussed in the meeting
 - Trying to consolidate meetings, such as combining reevaluations with IEP team meetings
 - Federal timeline of 60 days allowed for evaluation, unless states have enacted other timelines or parent or guardian enrolls the student in another school district, or does not produce the student for evaluation
 - Changes to a child's IEP do not require another meeting if the LEA and parent or guardian of the child agree.
 - IEP can be amended or modified without redrafting the entire IEP.
 - Alternative means of meeting participation and communication, such as video conferences, conference calls, and email; e.g., parent(s) and guardian(s) must give informed consent prior to an initial evaluation, with email as an acceptable mode.
 - Families have the right to obtain one free independent evaluation for each school evaluation (or reevaluation) if they believe that the evaluation conducted by qualified school personnel was inappropriate. If a school district does not agree to pay for an independent evaluation, then a hearing officer is obtained to determine whether or not another evaluation is warranted. If a private evaluation is conducted, the school district considers the findings, but does not necessarily have to agree with or implement the recommendations.
 - Reducing paperwork burdens on teachers by conducting reviews of processes, forms, and expanding use of technology in IEP process
 - Reducing number of times copy of procedural safeguards is given to parents or guardians, now only required once a year, unless parents request them again
 - Use of positive discipline and other behavioral assessments and classroom approaches to prevent emotional and behavioral violations from reoccurring
 - Change in discipline code on a case-by-case basis to ensure the safety and appropriate educational atmosphere in the schools under the jurisdiction of

the local educational agency, allowing schools to expel students without first determining whether the behavior was linked to the child's disability. Students can be removed for up to 45 school days with instruction in another setting (IAES, interim alternative educational setting).

- Recording the incidence, duration, and type of disciplinary actions, and determining if misbehaviors were the result of a failure of the IEP
- Setting up procedures that require the state educational agency (SEA) to develop a model form to assist parents in filing a complaint, and a due process complaint notice
- Delaying due process hearing while all parties attempt to meet to resolve problems, and not allowing parties to raise issues at due process hearings that were not raised in original complaint
- LEA conducts a Child Find to ensure and provide equitable services to children with disabilities who attend private schools within the LEA, without regard to where the children may reside (Office of Special Education Programs, 2005). Part C of IDEA refers to children from birth to age 3.
- Strengthening the role and responsibility of parents, and ensuring that families have meaningful opportunities to participate in the education of their children at school and at home

Resources for Further Updates

Council for Exceptional Children—www.cec.sped.org

Legislative information from the Library of Congress—<http://thomas.loc.gov>

U.S. Department of Education, No Child Left Behind—<http://www.ed.gov/nclb/landing.jhtml>

Wrightslaw, information about special education laws—www.wrightslaw.com

American Recovery and Reinvestment Act of 2009—www.ed.gov/policy/gen/leg/recovery/factsheet/idea.html

U.S. Department of Education, Building the Legacy: IDEA 2004—<http://idea.ed.gov>

Response to Intervention (RTI) and Literacy Collaborative—www.lcosu.org/documents/PDFs/RtI_in_Literacy_Collaborative_Schools.pdf

PACER Center: Champions for Children With Disabilities—www.pacer.org/about/index.asp

DISABILITY CATEGORIES UNDER INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

In order to receive funds under Part B of IDEA, states must assure that a free and appropriate public education (FAPE) is provided to children within 13 disability categories, at no cost to the parents, guardians, and families, in conformity with the individualized education program.

Exact classification language of each state is decided after it looks at federal regulations and does its alignment. As the United States Department of Education points out, the federal role in education is limited as per the 10th Amendment. Education policy is determined at state and local levels. School districts across the United States have many interpretations and implementations of federal disability laws. Sometimes states use different terms, but it is not the label that is important; it is matching the criteria under that disability category. Labels are just for eligibility. There is an enormous disadvantage for students when certain words and a condition title are needed to describe and convey a *disability*, rather than a person. Again, some states use different terms, as words develop negative connotations, but criteria remain the same and are aligned with federal regulations, with varying state interpretations and school applications.

IDEA Categories

Autism

A developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects educational performance. Added to IDEA in 1990.

Deafness

A hearing impairment so severe that a child is impaired in processing linguistic information through hearing, with or without amplification, resulting in adverse effects on educational performance.

Deaf-Blindness

Simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that a child cannot be accommodated in special education programs solely for children with deafness or blindness.

Hearing Impairment

An impairment in hearing, whether permanent or fluctuating, which adversely affects a child's educational performance but is not included under the definition of "deafness."

Mental Retardation

Significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior, manifested during the developmental period, which adversely affect a child's educational performance. Mental retardation is still listed as a category under the federal law, but some states have chosen other titles due to the associated negative connotation, e.g., intellectual, developmental, cognitive disability.

Multiple Disabilities

Simultaneous impairments (such as mental retardation/blindness or mental retardation/orthopedic impairment), the combination of which causes such severe educational problems that the child cannot be accommodated in a special education program solely for one of the impairments. The term does not include children with deaf-blindness.

Orthopedic Impairment

A severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly such as clubfoot, or absence of a limb. Impairments caused by disease include poliomyelitis or bone tuberculosis, and impairments from other causes such as cerebral palsy, amputations, and fractures or burns that might cause contractures (loss of joint motion).

Other Health Impairment

Having limited strength, vitality, or alertness, due to chronic or acute health problems such as attention deficit hyperactivity disorder, heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, and Tourette syndrome (listed as a chronic or acute health problem under IDEA 2004), which adversely affects a child's educational performance.

Emotional Disturbance

A condition exhibiting one or more of the following characteristics over a *long period* of time and to a marked degree, which adversely affects educational performance:

- a. An inability to learn that cannot be explained by intellectual, sensory, or health factors
- b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers
- c. Inappropriate types of behavior or feelings under normal circumstances
- d. A general or pervasive mood of unhappiness or depression
- e. A tendency to develop physical symptoms or fears associated with personal or school problems

The term includes children who have schizophrenia. The term does *not* include children who are socially maladjusted, unless it is determined that they have a serious emotional disturbance.

Specific Learning Disability

A disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury,

minimal brain dysfunction, dyslexia, and developmental aphasia. The term does *not* include children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; mental retardation; emotional disturbance; or environmental, cultural, or economic disadvantage.

Speech or Language Impairment

A communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child's educational performance.

Traumatic Brain Injury

An acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, which adversely affects educational performance. The term does *not* include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. Added to IDEA as a category in 1990.

Visual Impairment, Including Blindness

A visual impairment includes both partial sight and total blindness, which even with correction adversely affects a child's educational performance.

Source: National Dissemination Center for People With Disabilities, <http://www.nichcy.org>.

The following is a mnemonic to help you remember all 13 IDEA disabilities:

All very determined students deserve many more opportunities than school has ever offered.

All (autism)

very (visually impairment)

determined (deafness)

students (speech and language impairment)

deserve (deaf-blindness)

many (mental retardation)

more (multiple disabilities)

opportunities (orthopedic impairment)

than (traumatic brain injury)

school (specific learning disability)

has (hearing impairment)

ever (emotional disturbance)

offered (other health impairments).

HISTORY OF THE AMERICANS WITH DISABILITIES ACT (ADA)

The Americans with Disabilities Act (Public Law 101–336), passed in 1990, was designed to prohibit discrimination against people with disabilities by state and local governments and provide equal opportunities in the following areas:

- Public accommodations
- Employment
- Transportation
- Telecommunications
- State and local governments

ADA's intent was to afford people with disabilities the same opportunities as everyone else to lead full and productive lives. Its goal was to break down barriers for people with disabilities that stop them from achieving emotional and social independence. As a civil rights act, its enforcement enables our society to benefit from the skills and talents that people with disabilities have always possessed, but have been thwarted from demonstrating. The overall goal in schools is to offer reasonable accommodations for students with disabilities to achieve the same results and be given the same benefits as students without disabilities.

The ADA Amendments Act (ADAAA) of 2008 defines *disability* as an impairment that substantially limits major life activities such as breathing, seeing, hearing, speaking, learning, caring for oneself, working, eating, sleeping, bending, lifting, communicating, thinking, reading, and concentrating. Included here are examples of major bodily dysfunctions that directly impact major life activities, related to the circulatory, respiratory, digestive, and reproductive systems, along with the functions of neurology, brain, cell growth, immune system, bowel, and bladder. If the impairment is temporary, such as a non-chronic condition of a short duration, then that person is not covered under ADA. For example, someone with a broken leg would not qualify. Disabilities that are 6 months or less in duration do not qualify. In addition, ADA states that a person must have a record of an impairment, thereby including someone recovering from a chronic or long-term impairment such as mental illness or cancer. The definition expands further by including someone who is regarded as having such an impairment. This involves how others regard or look at someone with a disability. ADA would protect someone who might have a facial disfigurement such as cleft palate from being denied employment because of workers' reactions. It would also allow an individual who has motor impairments due to cerebral palsy to perform a job that someone might incorrectly assume he or she cannot cognitively perform due to the person's discriminatory perception of the individual. The U.S. Equal Employment Opportunity Commission (EEOC) and the Supreme Court had made many decisions that are reversed by the ADAAA in terms of how to define "substantially limits," with ADAAA being less rigorous. In addition, the conditions are looked at without regard to the ameliorative effects of medication, medical supplies or equipment, prosthetics, assistive technology, reasonable accommodations or auxiliary aids, or behavioral or adaptive neurological modifications. This means that the underlying impairment is looked at without considering the effects of the extra devices; just the disability itself is addressed.

An individual is deemed “qualified” for a job position if he or she possesses the skills, education, or other job requirements of the position, with or without reasonable accommodation. This basically prohibits discrimination against individuals with disabilities in the private sector. Court systems are currently interpreting this law on an individual basis.

Examples of reasonable accommodations include the following:

- Modifying a work schedule
- Providing menus in Braille, or a waiter reading the menu to a customer who is blind (the former allows for more independence)
- Installing numbers in Braille in office or hotel elevators and outside rooms
- Allowing seeing-eye dogs in public facilities
- Providing a sign interpreter at theater performances, if the theater is given sufficient notice by someone with a hearing impairment
- Providing assistive listening devices
- Training personnel to administer insulin to people with diabetes
- Removal of existing barriers, if it is readily achievable and can be done without much difficulty or expense. For instance, if a ramp or elevator could not be built because the business is not profitable enough, curbside service could be provided to people with disabilities. However, not every building or each part of every building needs to be accessible.
- Accommodations could be as simple as lowering a paper towel dispenser, widening a doorway, or providing special parking spots.

Courts levy penalties against a business if it shows bad faith in complying with ADA. Acts of bad faith might include deliberately ignoring a person’s request, hostile acts, or refusing voluntary compliance. The Justice Department considers the size and resources of individual businesses before civil penalties are issued. Complaints must be valid. For example, refusing employment to someone because he or she suffers from depression, has AIDS, or has a history of alcoholism would be discrimination based upon societal stereotypes, not the person’s ability to perform a job. However, someone with myopia or hypertension is not covered by ADA because the condition is correctable (e.g., with eyeglasses and medication). If a person needs to use a seeing-eye dog, the owner of a restaurant cannot arbitrarily deny admittance to the dog and the patron who is blind. Similarly, if the venue is given ample notice, sign language interpreters must be provided at theaters and other public gatherings for people who cannot hear.

Court cases continually wrestle with the meaning of the word *disability*. In 1998, a golfer with a birth defect in his right leg, Casey Martin, was allowed to ride a golf cart instead of walking the course in tournament play. At the time, the PGA thought that Mr. Martin would have an unfair advantage over other golfers, but the Supreme Court determined that a golf cart was a reasonable accommodation, since Casey Martin suffered from fatigue, and walking the course would have been an additional burden for him. In May 2004, the Supreme Court allowed a man in a wheelchair—George Lane, who was a defendant ordered to testify—and Beverly Jones, a court reporter with a mobility impairment, to sue the state of Tennessee for monetary damages since they needed to appear in a second-floor courtroom in a building without elevators. In this ruling, it was determined that there was a failure to

provide people with disabilities access to the courts. Other cases concern seniority issues being honored (e.g., person with a disability cannot take the job of a worker without a disability who has higher seniority), whether someone's health might be impacted by a certain job (e.g., working with chemicals if you have a preexisting medical condition), being granted testing accommodations on a graduate level, claiming too much noise interfered with passing a nursing exam for someone with a mental impairment, or whether someone who has chronic fatigue syndrome can adequately perform a job. Topics also include the possibility of granting indefinite periods of leave or open-ended schedules.

Reasonable accommodations mean that with the accommodation in place, the person is otherwise able to perform all of the job requirements. Safety is sometimes a mitigating factor; for example, someone who is blind cannot successfully claim discrimination because he or she is not hired as an airline pilot. ADA enters school settings by guaranteeing that staff, parents, families, and students with disabilities have access to school plays, conferences, graduation ceremonies, and more. It translates to guaranteeing the same access to students with disabilities as peers without disabilities have, e.g., a librarian assisting a student in a wheelchair so he or she has access to books on higher shelves or allowing a student who has cerebral palsy to be a cheerleader. There are no special education rules in ADA; however, it does have an impact on education as well. Overall, as a civil rights act, ADA protects persons with disabilities in the private sector and school settings by guaranteeing reasonable accommodations, services, aids, and policies, as it works in alignment with other state and federal laws.

CIVIL RIGHTS FOR STUDENTS WITH DISABILITIES UNDER SECTION 504

Section 504 of the Rehabilitation Act of 1973 generally refers to adjustments in the general education classroom, but can include other educational services as well. It states the following:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (<http://www.ed.gov/about/offices/list/ocr/docs/placpub.html>. The regulation implementing Section 504 in the context of educational institutions appears at 34 C.F.R. Part 104.)

Public school districts, institutions of higher education, and other state and local education agencies are required to provide the protections found in Section 504. Both ADA and Section 504 are enforced by the Office for Civil Rights (OCR), while IDEA is enforced by the Office of Special Education and Rehabilitative Services (OSERS), which are both components of the U.S. Department of Education. ADA does not limit the rights or remedies available under Section 504. Students with IEPs may also have 504 plans, while students with 504 plans do not necessarily have IEPs.

For a person to be classified as having a disability, he or she must have a record of a physical or mental impairment that limits one or more major life activities, and be regarded as having such an impairment. A life activity includes functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working, along with the amended additions from ADAAA 2008, which include eating, standing, sleeping, lifting, bending, reading, communicating, thinking, and concentrating. In addition, other life activities not included in 504 can also be protected. Trained personnel who have particular knowledge of the strengths, abilities, and unique needs of the students conduct the evaluation of students with disabilities to determine placements. The information is not solely based upon one assessment, and must assess the student's need, not the impairment. For example, a student with blindness cannot be asked to count the number of hands raised, but would need to be given an alternate kinesthetic accommodation to test the child's ability to actually count, not his or her ability to see the hands. Placement decisions come from varying sources, including teacher recommendations along with aptitude and achievement tests, and they must take into account cultural, social, physical, and adaptive needs.

Like IDEA, Section 504 states that every effort must be made to educate students with their nondisabled peers, if the academic and social needs can be met there. Appropriate education for a student with a disability might include placement in a general or special education class with or without supplementary services or related services. Specific recommendations must include strategies and delineate accommodations. Disability documentation needs to be provided, and necessary accommodations must be requested. Individuals who qualify for Section 504 protection can fall under any of the 13 IDEA classifications or others such as the following examples; this is not an exhaustive list:

AD/HD	Diabetes
AIDS	Emotional/Psychiatric Disability
Arthritis	Epilepsy
Asthma	Hearing Impairment/Deafness
Cancer	Learning Disability
Cerebral Palsy	Visual Impairment/Blindness

Strategies, names of implementers, monitoring dates, and general comments are examples of elements included in 504 plans. If a student qualifies for services under IDEA, that student does not need both an IEP and a Section 504 plan. The reason is that one way to meet 504 requirements is to comply with IDEA. General education teachers must implement provisions of Section 504, or that district may be found to be noncompliant with the federal law. Again, the general education teacher needs to review the 504 plans of students to effectively implement appropriate educational services. School districts must properly identify and evaluate students with disabilities who need services, supplying an educational plan under Section 504, which is

then protected by procedural safeguards. In this scenario, teachers also need proper instruction and preparation to meet an individual child's needs if that child has a 504 plan. Parents and guardians, building administrators, teachers, support staff, and the Section 504 coordinator are involved in developing the plan. The coordinator may be a principal, guidance counselor, special education director, supervisor, or another appointed qualified staff member. A 504 plan can be as simple as including strategies that break down long-term projects into smaller sequential steps, sending home a duplicate set of texts, or maybe sitting a child nearer to the center of instruction—e.g., chalkboards or interactive whiteboards. It may also include training staff how to use an EpiPen (to inject emergency allergy medication) or allowing a child with diabetes more frequent breaks or access to unlimited water. Overall, health and learning plans are determined and outlined in 504 plans.

Section 504 laws apply to elementary, secondary, and post-secondary schools. Trained personnel who assess the needs, not the impairments, must conduct evaluative procedures in order to determine placement. Placement decisions consider the maximum extent to which the student can be educated with his or her peers without disabilities. This may be accomplished with and without supplementary and related services, but must be subject to periodic reevaluations. Parents and guardians are informed about all placement and evaluation actions, and may examine their child's records. Students may not be denied access to any nonacademic activities, such as clubs, transportation, athletics, and counseling, based upon their disability.

PAST, PRESENT, AND FUTURE CONCERNS

Special education was not always accepted in the larger school community. Before the passage of Public Law 94-142 (Education of the Handicapped Act) in 1975, students with disabilities did not receive the most appropriate services. After the act was passed, students were entitled to receive a free and appropriate public education, designed to meet their unique needs. The result of this law was the development of specialized programs and services. However, nowhere does the law explain what *appropriate* means, or use the word *inclusion*. Approximately 20 years later, it was discovered that these separate programs were actually excluding students with disabilities from exposure to the general education curriculum and not preparing them for successful community integration. IDEA 1997 advocated people-first language—looking at the student first, and then the disability. After all, students should not be defined by what they cannot do, but rather their strengths should be highlighted. IDEA 2004 now mentions RTI as a part of the evaluation for identification of a student with a specific learning disability. RTI is not mandated, but offered as an option, instead of solely using the discrepancy model, which involves a discernible discrepancy revealed between tested intelligence and school performance. Therefore, more accountability is now placed upon the types of instruction, programs, and interventions offered. Yes, students have differences, but now classrooms must proactively offer appropriate interventions before automatic student labeling. Sometimes it's the instruction, not the disability, that's the culprit of lower performances.

Today's thrust is upon inclusion and improving student outcomes with appropriate interventions, but new concerns are already becoming evident. Debates between teachers and administrators include topics such as time for planning and

collaboration, types of supports and assessments given, modifications of curriculum, how to divide instructional time to equally provide learning for all groups of learners, behavioral concerns, and accountability issues. Often teachers are so overwhelmed by their busy days that they are unable to preplan, evaluate, and assess lessons with cooperating teachers. In the ideal world, common planning time should be allotted in both general and special education teachers' schedules, giving them the time to design and evaluate lessons. Consistent constructive review of both successful and unsuccessful teaching methodology is an integral inclusionary factor. Response to interventions has entered classrooms, but just who determines what constitutes an effective intervention and assessment is still an issue in its infancy, morphing with each new report and study. Reliability and validity of programs require further determination.

Teachers are seldom unwilling to include students, but some lack the training or experience regarding what strategies, programs, or academic or behavioral scaffolding need to be provided, without sacrificing any one group of learners. State and national curricula further complicate these issues and cause concern about taking time away from instruction of much-needed skills, as well as concerns about individuality of instruction. Accountability of student performance raises the following question among teachers, students, parents, administrators, and learners:

“Does fair mean equal?”

Outcomes and delineated standards for all students have become our nation's goal. Standards have now been applied to all students, with no one taken out of the accountability loop as with past SE practices. Several studies (Mostert & Crockett, 2000; Norris & Schumacker, 1998; Skiba et al., 2008) have revealed that in the past, schools have disappointed former special education students with ineffective interventions. Now, research highlights that aligning the content standards with assessments and appropriate instruction results in higher learning outcomes for all students, those with and without disabilities (Browder, 2006; Thurlow, 2003; Wiener, 2005).

Special education teachers face further challenges as they try to balance and align the standards with students' IEPs and the assigned curriculum. Educators feverishly think of ways that students with disabilities can achieve mastery or progress toward those standards. The curriculum is not diluted for any group of students, but taught in sub-skills that reflect the standards in smaller, more palatable bites. Individual strategies, materials, and accommodations are geared toward achieving higher outcomes for all students. As the years progress, hopefully assessments and accountability systems will highlight weaknesses in school systems, not in students.

This will require both GE and SE teachers to have a greater knowledge of the curriculum, content standards, and the strengths of students with *disabilities* who are now expected to achieve those standards. Educators of students with more severe cognitive disabilities also take steps to help their students achieve strides toward the curriculum standards. Ignoring improvements toward achievements is simply not an option for any group of students. Inclusion is marching onward, with everyone honoring abilities and ways to increase academic, behavioral, social, emotional, and

functional levels in all domains. Overall, the SE trend is now moving from access to accountability (Chambers, 2008). Thankfully so!

Unfortunately, at times, an abundance of paperwork has scared away many teachers from continuing in the field, since quite often their time is deducted from much-needed student instruction in order to comply with writing IEPs and data reports, attending meetings, and keeping on top of changes in legislation. In the attempt to “get it right,” families, general and special education teachers, and all students can be frustrated by the sometimes confusing system, which makes it harder to focus on helping students with disabilities achieve academic and social successes. Some of the revisions in IDEA 2004 address that—e.g., reducing the number of meetings, allowing revision consent by email, combining meetings.

Inclusion is a fabulous concept, but the pragmatics involved do not always result in its proper implementation. Inclusion has sometimes actually resulted in exclusion. Students with disabilities who are included in a general classroom are at times overwhelmed by the pace, complexity, and amount of work they are expected to do, and prior knowledge they are assumed to have. Special educators should be integral members of the larger school community, but this is often not the case. Special educators and students possess the ability to make integral, productive contributions to the classroom. All students and teachers need to be treated as equals both in the general classroom and across the whole school district. As delineated in Chapter 6 on collaboration, special education and general education teachers can work as partners to instruct all students in shared classrooms with ability levels ranging from nonverbal with autism to gifted.

The educational goals of students with disabilities are just as valid as those of other students. High expectations need to be developed for all students in the classroom, but without proper supports, children and teachers can become lost and frustrated by the system. Sometimes, wonderfully conducted research offering promising techniques seems difficult or impossible to pragmatically translate into classrooms composed of students with mixed abilities.

General education teachers want all students to succeed, but they need more direction and training on how to differentiate instruction without sacrificing any one group of students. Inclusion has sometimes dangerously erased direct skill instruction that was formerly given in separate classrooms. Public Law 94-142, the grandmother of IDEA, originally called the Education of All Handicapped Children Act, which was passed by Congress back in 1975, was designed to provide services to students whose academic needs were not being met in the general education classroom. Today, unless the dynamics of the general education classroom are changed, these academic, social, cognitive, and emotional needs will still not be met. RTI can and should be used to monitor progress and adjust interventions accordingly, yielding benefits for all learners who are struggling with the curricula, not just those learners who receive special education (Chambers, 2008). Interventions are offered in general education classrooms first, before students are assumed to require special education services. The thinking here is that perhaps it is the instruction that is the issue, rather than the student who is disabled. Many families, administrators, educators, related staff, and students have concerns and sometimes diverse desires, interpretations, and ways to think about both general and special education deliveries, services, and interventions.

Somewhere in *edutopia*, a happy balance needs to be achieved with interventions to determine what kind, what extent, how, where, and who will deliver the interventions.

Special education is headed in the right direction. With more fine-tuning, this transitional stage will effectively ride the current turbulent waves. Education never worked well with a one-size-fits-all philosophy. Inclusion is a great idea, if it is properly implemented, but should not be considered the only option if the child's academic and social needs are not being met by placement in the general classroom. Accountability, along with appropriate identifications and interventions, is essential. Special education is an *evolutionary*, not a *revolutionary*, process. Significantly reducing the bureaucracy, paperwork, and litigiousness that too often springs from disagreements over implementation of the law; settling school discipline issues; and figuring out how to continually and appropriately fund IDEA and just which academic and behavioral interventions are appropriate ones are not simple issues. Education is a complex issue for parents, guardians, teachers, administrators, all staff members, and children of all abilities. However, always keep in mind that the ultimate goal is successful outcomes for all!



COOPERATIVE LEGISLATIVE REVIEW

Directions: As a review of these readings, choose either Option 1 or Option 2.

Option 1: Cooperatively answer 6 of the following 10 questions on a separate piece of paper. Circle the question numbers you will be answering. Each person should write down the answers (true cooperative learning).

Option 2: If your group has access to multiple computers, cooperatively divide, complete, and then share questions and answers to the Legislative Web Quest (Questions 1–5) instead.

Rationale for collaborative options: Choosing questions or assignments to answer or complete empowers learners. Questions are teacher-guided, but students gain some control and responsibility as self-regulated learners. Within your classrooms, these types of choices can be offered from early grades onward to continually develop and foster independent learning and increased student responsibility. In addition, completing assignments collaboratively fosters interpersonal and team skills.

Option 1:

1. Describe three laws that protect persons with disabilities.
2. List the 13 IDEA categories.
3. Who can benefit from a 504 plan?
4. Think of a disability scenario that the ADA is protecting.
5. Compare and contrast the benefits and pitfalls of inclusion.
6. If you could amend any of the laws, what changes would you make?
7. Where do you see special education going in the next 10 years?
8. Tell how children with disabilities can benefit from inclusion.
9. How can general education teachers influence a child’s classroom success?
10. Do you think special education is going in the right direction?

Option 2 Legislative Web Quest
<ol style="list-style-type: none"> 1. Identify and briefly describe three major disability laws that affect students in school settings. 2. Name the elements of an IEP. 3. Briefly describe two court cases and their implications for inclusive environments. (Possible choices from 18 below) 4. Identify the elements listed in a student’s transitional plan. 5. What rights do families have in formulating IEP documents?
<p>Use these Web sites for your responses: www.wrightslaw.com, www.cec.sped.org, www.nichcy.org, http://IDEA.ed.gov</p>

Court Cases	Main Concepts
1. <i>Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania</i> , 1972	Students with disabilities are not excluded from appropriate educational opportunities
2. <i>Mills v. Board of Education of the District of Columbia</i> , 1972	Need to provide whatever specialized instruction will benefit the child, with due process and periodic review (precursor of IDEA)
3. <i>Board of Education of the Hendrick Hudson Central School District v. Rowley</i> , 1982	FAPE (Free Appropriate Public Education)
4. <i>Brookhart v. Illinois State Board of Education</i> , 1983	Passing state tests to receive HS diplomas
5. <i>School Board of Nassau County, Florida v. Arline</i> , 1987	Defenses under 504—reasonable accommodations
6. <i>Honig v. Doe</i> , 1988	Suspension & expulsion
7. <i>Timothy W. v. Rochester, New Hampshire School District</i> , 1989	Proof of benefit not required, there is zero reject

Court Cases	Main Concepts
8. <i>Sacramento City Unified School District, Board of Education v. Rachel H.</i> , 1994	LRE (Least Restrictive Environment)—educational & nonacademic benefits weigh in as well, e.g., social, communication
9. <i>Gadsby v. Grasmick</i> , 1997	States to ensure compliance with IDEA
10. <i>Sutton v. United Airlines, Inc.</i> , 1999	Disability defined with corrective devices
11. <i>Cedar Rapids v. Garret F.</i> , 1999	Related services
12. <i>Toyota Motor Manufacturing, Kentucky, Inc. v. Williams</i> , 2002	Substantial limitation in major life activity under ADA
13. <i>AW ex rel. Wilson v. Fairfax County School Board</i> , 2004	Manifestation determination— <i>Did the disability impact the student’s ability to control the behavior?</i>
14. <i>Schaffer ex rel. Schaffer v. Weast</i> , 2005	Burden of proof in a due process hearing on party seeking relief
15. <i>Arlington Central Sch. Dist. Bd of Ed v. Murphy</i> , 2006	Entitlement to parents to recover fees paid to expert witnesses if they prevail
16. <i>Winkelman v. Parma City School District</i> , 2007	Parents who act as their child’s lawyer in IDEA actions, if they are not licensed attorneys
17. <i>Board of Ed of City of New York v. Tom F.</i> , 2007	Reimbursement for private education if student was not enrolled in public school
18. <i>Forest Grove School District v. T. A.</i> , 2009	Reimbursement for private special-education services when a public school fails to provide FAPE, free appropriate public education

IMPLICATIONS OF THE ELEMENTARY AND SECONDARY EDUCATION ACT (ESEA)

Let me begin this section with a few questions before we delve into the *meaty* implications of ESEA. When George W. Bush reauthorized ESEA as NCLB, No Child Left Behind, at the turn of the millennium, panic permeated throughout school districts, with teachers asking a question such as

If my students fail the standardized tests, will I be fired?

A decade later, teachers asked a question such as

How many times do I have to administer this benchmark test?

In the future, teachers may ask,

Whatever happened to the good old days when we had time for things other than tests, such as fun learning activities?

Now let's review the history of NCLB before we return to those three questions. In its legislative infancy, NCLB was ESEA, the Elementary and Secondary Education Act of 1965. In the years 2001 to 2002, ESEA was updated and signed into law by President George W. Bush, with the intention that it would provide a better education for all children. Schools are now held more accountable for results, while families are given additional school selection options. In addition, methods of teaching and teacher qualifications are more heavily scrutinized. NCLB focuses on improving the academic achievement of all students, allowing everyone access to future progress and lifelong achievements, including those from the highest- to the lowest-income schools. The expanded definition includes the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs (in the amended Section 9101-37 of ESEA). This includes rigorous data analysis with multiple measurements, observations, controls, and designs. Peer-reviewed academic journals are valued over educator magazines or practitioner journals. Instead of snapshot approaches with short-term results, assessments now involved longitudinal data that reveal and advocate more accountability, which impacts the selection of instructional programs. The data and results are viewed as valuable information and tools that yield improvements. Annual reading and math assessments are in place, with achievements made in *adequate yearly progress* (AYP). Children with disabilities are included in district testing, allowing for a small percentage of students with more significant cognitive impairments to receive *alternate assessments based on modified academic achievement standards* (AA-MAS). The Department of Education designates a status label for assessment systems in its effort to both enforce the act and realize the intricacies involved with the development, compliance, and implementation of valid standards and assessments. Under ESEA, school report cards are provided, indicating annual progress from state, district, and individual schools. Federal money is available to recruit more qualified teachers and be put toward targeted needs. Teachers are encouraged to look at *what* is taught, and *how* it is taught, using research-based and scientifically proven methods. Choices are given to parents and students with access to supplemental educational services for those students attending failing schools, along with sanctions levied for schools that do not comply with the legislation.

As this book is going to press, the ESEA act, which is also known as NCLB, will again be reauthorized, with talk of not only content changes but a name change as well. The goal is to strengthen the act with more overall accountability and pragmatic school connections. The following represents some recommendations for improvements in the act from educational organizations:

Sample of American Association of School Administrators (AASA) recommendations:

- Establishing evaluation scales to measure success/failure in working toward performance standards
- Use of accountability systems with either growth or status models to judge school successes
- Targeting assistance to students with highest needs with tailored accountability systems, e.g., students with disabilities, English language learners (ELLs)

- Ongoing improvement and alignment of state standards to match knowledge and skills schools expect students to master
- Focus on helping improve achievements among highest-poverty students

American Federation of Teachers (AFT) recommendations include the following:

- Allowing credit for system's progress or proficiency, e.g., school not solely judged upon strict percentages in each labeled subgroup if it already starts with a larger number of students who are academically behind
- Not sacrificing other subject areas outside those being tested, but the integration of content areas with other subjects, e.g., reading, math, science involved across disciplines, including continual focus on lessons that involve art, music, social studies, world cultures, physical education, alongside the reading, math, science, and more
- Data accumulated should be disseminated in a timely fashion, e.g., before the onset of the next school year, to be appropriately applied to classrooms
- Modified tests and appropriate guidelines for students with disabilities and English language learners, allowing students appropriate assessments and accommodations, e.g., guided by IEPs, linguistically modified
- Allowing schools to receive interventions and continued financial support to foster and maintain improvements
- Establishing a learning environment index that relates to students' achievements, e.g., gauging professional supports available, materials, safe conditions

Sources: <http://www.ed.gov/policy/elsec/leg/esea02/index.html>, <http://www.ed.gov/nclb/landing.jhtml>, <http://www.thefreelibrary.com/AASA+responds+to+NCLB+commission+report-a0162242259>, <http://www.aft.org/topics/nclb/downloads/NCLBRecommend060606.pdf>

Now, back to those original questions and some answers:

If my students fail the standardized tests, will I be fired?

No, but the types of programs, instructional strategies, accommodations, frequency, duration, and location of interventions, assessments, and evaluations will be reviewed and revised to determine just why the learning gaps exist. The focus needs to address how to better deliver targeted curriculum standards—not pointing fingers, but promoting remediation.

How many times do I have to administer this benchmark test?

It's not about how many times a benchmark test is given, but what that benchmark test reveals in terms of instruction and curricular focus. It's better to have more formative assessments, rather than being surprised by one giant summative evaluation! Benchmark tests hopefully reveal the effectiveness of strategies and interventions, with students' responses telling administration and staff what standards need to be addressed or what deliveries require fine-tuning.

Whatever happened to the good old days when we had time for things other than tests, such as fun learning activities?

With creativity, perseverance, and diligence regarding the curriculum standards, teachers will realize that assessments do not replace *fun*, but accompany tangible learning results. The distribution of time to concentrate on learning does not translate to the deletion of other activities, but must correlate with the standards and all subjects. Then the message is transmitted to students that learning is fun and not just about the test! Accountability is crucial, but can only be accomplished if it accompanies higher student motivation.

Accountability Questions to Ponder

- How is increased accountability for students with disabilities a step in the right direction?
- What is the impact of reauthorization of NCLB in individual students from different ability groups?
- Can a revised ESEA/NCLB eventually replace IDEA?
- What impact will sanctions have on schools with students with disabilities?
- Will teachers teach to the test, or can all subjects be equally balanced?
- What will the educational picture look like in the next few decades?

(Answers can and will vary.)

TRANSLATING RESEARCH INTO LEARNING STRATEGIES THAT WORK

Researchers and Professional Literature Say the Following:

- Structured, well-delivered, research-based interventions positively influence student performance within inclusive environments, honoring high expectations and best practices for all students (Beattie, Jordan, & Algozzine, 2006; Damasio, 2003; Karten, 2007b; LeDoux, 2002; McNary, Glasgow, & Hicks, 2005; Sousa, 2007).
- Successful quality inclusion programs involve team approaches with collaborative efforts from schools and families, allowing for flexibility to perceive when something works well and adaptation to change it when it does not work (Willis, 2009).
- Social skills do not come naturally to students with autism and must be directly taught if they are going to be mastered, e.g., what to explicitly do and say in each situation (Baker, 2005).
- The stages of backward design—or *understanding by design* (UbD)—involve identifying the desired results first, determining acceptable evidence, and then planning experiences and instruction accordingly. This includes the acquisition of important information and skills, making meaning of the content, and then effectively transferring that learning beyond the school (Wiggins & McTighe, 2005).

- Teachers must understand the role of culture in human development and schooling in order to make good decisions about classroom management and organization (Rothstein-Fisch & Trumbull, 2008).
- “A teacher can be ten times more effective by incorporating visual information into a classroom discussion. . . . Our brains have more receptors to process the images coming in than the words we hear” (Burmark, quoted in Association for Supervision and Curriculum Development [ASCD], 2002, n.p.).
- Teachers need to present new information in smaller chunks and offer strategic stopping points for demonstration, descriptions, summarization, discussion, and predictions. Teachers also need to take steps to establish and communicate learning goals and track student progress as they interact with that new knowledge (Marzano, 2007).
- “Students need to know that they’re accepted. I had one student with a learning disability; everyone told him what was wrong with him, but no one tried to help him realize what was good in him” (Tomlinson, quoted in ASCD, 2002, n.p.).
- “Students need multiple opportunities to meet standards, and those opportunities should include differentiated instruction, accommodations and modifications, and opportunities for advanced learners” (Harris, quoted in ASCD, 2002, n.p.).
- Teacher efficacy (thinking that you will influence students’ successes), collaborative relationships, mentoring/advocacy, and community building are essential components of inclusive classrooms (Cramer, 2006).
- The people who work in the school building, e.g., principal, assistant principals, educators, instructional assistants, and all staff, along with their families, are the actual *inclusive experts* who know the students the best (Hammeken, 2007).
- “Traditionally special education legislation has focused on compliance with the procedure for providing special services described in the federal and state laws. However, the philosophy and the mandates contained in the 1997 Individuals with Disabilities Act (IDEA) shifted that accountability to focus on how students are meeting the new standards, thus increasing expectations for students with disabilities” (U.S. Department of Education, 1998, n.p.).
- IDEA 2004 includes RTI, response to interventions, a different way to identify students with disabilities and intervene with instruction and assessments for students who may be struggling (www.nasponline.org/advocacy/rtifact sheets.aspx).
- Schools who do not have forward-thinking programs for students with special needs are usually the ones with families who do not advocate for their children (Tramer, 2007).
- The absence of interventions in the early school years has a negative impact on academic, emotional, social, and behavioral growth of students with reading and behavior disorders (Cybele, 2003; Levy & Chard, 2001; Trout, Epstein, Nelson, Synhorst, & Hurley, 2006).
- Universal design of curriculum and instruction offers learning alternatives to students with and without disabilities and provides a framework to both create and implement lessons that value flexible goals, methods, and assessments (Pisha & Stahl, 2005; www.cast.org).

- Discussions, communications, connections, and learning in context help learners in inclusive classrooms develop better literacy and numeracy competencies along with higher cognitive skills (Chorzempa & Lapidua, 2009; Graham & Harris, 2005; Hyde, 2007; Karten, 2009; Steen, 2007).
- “The public wants schools to hold kids accountable, but they also want schools to recognize that kids are kids” (J. Johnson, 2003, p. 37).
- “Teachers who were involved in inclusive school programs felt that the students with disabilities could benefit from the curriculum of the general education classroom if two basic changes in classroom practice were made . . . modifying the curriculum to enhance the relevancy for each student and modifying instructional techniques. . . . Teachers’ interviews felt that the curricular and instructional changes were made possible by collaborative relationships developed, as teachers worked together to determine methods that could be used to best meet the needs of all learners. . . . Specific difficulties that impeded effective teaming included problems with scheduling and uncooperative teachers. The teachers commented that having enough time for planning is a critical aspect of effective teaming” (McLesky & Waldron, 2002, p. 53).
- Coteachers who work together in inclusive classrooms collaboratively improve student outcomes with the mastery of the curriculum standards and emotional growth (Friend & Cook, 2003; Karten, 2007b; Nevin, Cramer, Voigt, & Salazar, 2008).
- “The way to ensure that alternate assessment provides a vehicle for learning new skills is to include students in the construction, monitoring, and evaluation of their own portfolio work. Not only will this process reduce the burden on teachers, but students will have greater ownership of their own learning as they develop important component skills to the essential, long-term outcome of self-determination” (Kleinert, Green, Hurte, Clayton, & Oetinger, 2002, p. 41).
- Learning that is associated with students’ interests and experiences is more likely to be retrieved from students’ prior knowledge (Allsopp et al., 2008a; Karten, 2007b, 2008a, 2009).
- “Having opportunities to make choices in academic tasks can provide the environmental predictability needed to minimize inappropriate behaviors of students, while strengthening appropriate responses and increased levels of engagement. . . . For students with EBD [emotional behavioral disability], predictability and control may be critical concepts and skills that are necessary for appropriately coping with the environment” (Jolivet, Stichter, & McCormick, 2002, p. 24).
- Research-based instruction yields information on how children learn and how teachers need to teach with continual screening of essential skills, early interventions, progress monitoring, and data-driven decisions (Russo, Tiegerman, & Radziewicz, 2009).
- “We must still go a long way toward defining what curricular access means for *all* students. *We must also become more strategic* and more committed to designing professional development for general and special educators that promotes mutual understanding of standards and curricula and of how diverse students learn. Instructional planning must result in more than a

sequence of lesson plans: it must become a road map for bringing a group of students on *different routes to some common destinations*" (McLaughlin, 2000, p. 31, emphasis added).

- Students with special needs require academic and social support with effective accommodations, modifications, and guidance to achieve educational and emotional gains in inclusive settings, e.g., differentiation of instruction, honoring individual student strengths, needs, and potentials (Beattie et al., 2006; Karten, 2008a, 2009; Littky, 2004; McKinley & Stormont, 2008; Salend, 2005; Tomlinson, 2008).

My Pragmatic Research Investigation

My research says . . .

Source:

INCLUSION AND THE STUDENT WITH DISABILITIES

When *inclusion* replaced the word *mainstreaming*, many teachers and professionals embraced the idea while others thought if they resisted it enough, it might go away. Mainstreaming had students included in classrooms for subjects they were more prepared for. Inclusion says, let's include the students and make it work. There are no guidelines, but listed on the next page are several ways students, teachers, and peers can fit in. As the book progresses, all of these will be delineated further, with specific curriculum classroom applications.

Activity: Each person puts his or her name on an index card or Popsicle stick that is then randomly pulled from a hat, can, or jar to read the numbered inclusion ideas listed below. Each number on the list can also be clapped to focus attention, thereby adding a musical/rhythmic component. This procedure establishes equity in the classroom and stops the *ooh-ooh child* from volunteering to read everything or answering all of the questions. It also wakes up sleepers. In the classroom, sensitivity and variation can be used to help students with reading difficulties; e.g., have students with and without reading difficulties select the Popsicle sticks to be part of the activity, instead of to determine who reads, or intermittently ask some students to paraphrase statements instead so they are not embarrassed by reading words that are too difficult in front of the class. Always mix it up by also asking the best readers in the class to do non-reading activities as well.

Eighteen Inclusive Principles

1. Ask for help.
2. Differentiate content (what you are teaching) from process (how you teach—delivery and strategies).
3. Work with specialists as a team to modify and adapt the curriculum to meet the special needs of students while allowing for flexibility in scheduling.
4. Teach students how to learn by offering lessons in study skills along with the curriculum.
5. Get the whole class involved so that everyone is working together to help each other by establishing a team mentality.
6. Use cooperative learning and let peers work together to develop friendships.
7. Know when to change course.
8. Increase your own *disability* awareness.
9. Be aware of the physical classroom setup.
10. Provide directions in written form for children with auditory problems and in verbal form for those with visual difficulties.
11. Teach to strengths while avoiding weaknesses to minimize frustrations; e.g., honor students' favored intelligences after informal inventories.
12. Help students with methods to organize their written work.
13. Collect files containing additional higher-level materials and activities for students who require more challenges.
14. Allow students to work on various assigned tasks.
15. Be aware of multiple intelligences.
16. Value opinions of families and community.
17. Model appropriate behavior.
18. *Believe in yourself and your students!*

INCLUSION IS . . .

Directions for Inclusion Acrostic Activity: Write a word that describes inclusion next to each letter below. You can use whatever words you desire, but a suggestion for one of the Ns is the word *naturally*. Hopefully, including others can become something automatic and “natural”—a way of life.

Acrostic writing is sometimes used to focus thoughts and enhance creativity.

I

N

C

L

U

S

I

O

N . . . naturally

Success Stories

Whatever happened to that kid? Remember the one who wouldn't sit still in class and kept jumping around from activity to activity, without completing the specified requirements? Well, that child grew up and became the dancer who loves to express herself through body movements. Or that child might be the CEO who supervises others, multitasking and delegating the details to subordinates. Whatever happened to that child who doodled all day in class? Well, that child may now be the renowned architect or engineer who just designed that incredible building or new prototype for that ingenious car. Maybe the fidgety child who could never sit still learned to work with his hands, create sculpture, be a chef, or even

work as a sign language interpreter. Maybe the child who had trouble making friends is now a guidance counselor or child psychologist. Maybe the child who has Down syndrome is now gainfully employed and has learned to live independently. Maybe the child who couldn't stop talking is now a lawyer or a journalist. What about the child who could barely read at grade level? Well, that child now loves audio books and has figured out how to decipher the written word by using different learning strategies. That child also went on to college. Sure, the child might have needed a remedial reading and writing course, but with strong perseverance and support from friends, educators, and family, that child never gave up on her goals. That child graduated with a college diploma and is now gainfully employed. Maybe that child never went to college, but is now taking adult education courses to learn more. Maybe that child learned a trade and is now a whiz with computers, or maybe that child is an electrician or a plumber. Maybe that child learned to focus on her strengths and abilities. Maybe that child was helped by a teacher who successfully found a way to include her in the classroom. Maybe that child was included in society, not because it was the law, but because it was the right thing to do. Legislation and research support inclusion, but educators are the ones who must support the *child* by turning the rhetoric into successful classroom practice.