

The Least Restrictive Environment: A Service, Not a Place



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**10th Annual Focus on Inclusion
Conference**

What We Will Do Today

- LRE, mainstreaming, and inclusion
- Why LRE?
- Placement requirements of IDEA and Article 7
- LRE in the courts
- Serious placement errors
- Making educational appropriate & legally sound placement decisions
 - Placement flowchart

Prior to EAHCA, students with disabilities
“were excluded entirely from public
education or were deposited in regular
education classrooms with no assistance,
left to fend for themselves in an
environment inappropriate for their needs.

Board of Education v. Rowley, 1982

We are concerned that children with handicapping conditions be educated in the most normal possible and least restrictive setting, for how else will they adapt to the world beyond the educational environment, and how else will the nonhandicapped adapt to them?

- SENATOR ROBERT T. STAFFORD, *CONGRESSIONAL RECORD*, MAY 20, 1974

Placement
Requirements of the
IDEA & Article 7

Placement Requirement #1

- The placement decision must be made at least annually and on an **individualized** basis.
- Placement decisions **must not** be made **solely on the basis of factors** such as category of disability, severity of disability, availability of special education and related services, availability of space, or administrative convenience

Placement Requirement #2

A **team of knowledgeable persons** including a student's parents, who are knowledgeable about the student, the meaning of the evaluation, and the placement options, determine the student's placement (34 CFR § 300.116(a)(1)(2006)).

The **CASE conference committee** are the group of persons who are responsible for determining "the placement of a student and the setting or settings in which...services will be provided" (511 IAC 7-32-12 (3)(a))

Placement Requirement #3

Placement must be **based** on a student's IEP
(34 CFR § 300.116(b)(2)(2006); (511 IAC 7-42-10(3)(A))

Placement Requirement #4

Students with disabilities should be educated in the school that the student would attend if he/she was not disabled **unless** the student's IEP requires some other arrangement (34 CFR § 300.116(a)(b)(c) 2006); (511 IAC 7-42-10(3)(A))

Placement Requirement #5

When placing students, IEP teams should consider any **potential harmful effects** on the student, quality of services, teaching and learning of the student or his/her peers

(511 IAC 7-42-10(5))

Placement Requirement #6

A student with a disability **may not** be removed from an age-appropriate general education classroom solely **because of modifications** needed to the general education classroom (34 CFR§300.116(e), 2006).

Placement Requirement #7

In providing or arranging for the provision of nonacademic and extracurricular services or activities ensure that students with disabilities **participate** with nondisabled students to the maximum extent appropriate

(34 CFR § 300.117; 511 IAC 7-42-10)

Placement Requirement #8

Placements must be in the least restrictive environment or LRE

(511 IAC 7-42-10[7])

LRE refers to the educational setting **closest** to the general classroom in which the student can receive a free appropriate public education (**FAPE**). School district must have access to a **continuum of alternative placements** to ensure LRE is appropriate

First Consideration

- The IDEA requires that **first consideration** be given to **placement in the regular classroom with supplementary aids and services** to make that setting appropriate before a more restrictive is considered
- Letter to Cohen, OSEP 1996

Letter to Frost (OSERS, 1991)

- Question: “Does OSERS support the concept of regular class placement for all children with disabilities, sometimes known as full inclusion?”
- Answer: “Part B does not specifically mention the concept of “full inclusion” and, in fact requires placement decisions to be made on a **case-by-case basis**. Local educational agencies, therefore, need to maintain a **continuum of alternative placements...**”

Letter to Estavan (OSEP, 1997)

- Question: “Must a child first fail in the regular education environment before a local educational agency can consider placing the student in a more restrictive placement?”
- Answer: “A child with a disability **need not fail** in the regular education environment before a local educational agency can consider placement in a more restrictive setting.

Letter to Anonymous (OSEP, 2009)

- Question: Would full inclusion for all and/or most students within a public school district, regardless of their needs, etc., be a violation of the LRE mandate?
- Answer: “The statutory provision for LRE expresses a **preference, not a mandate**, for educating disabled students with disabilities in regular classes with supplementary aids” and services. The overriding rule is individualization

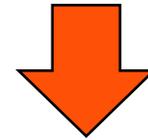
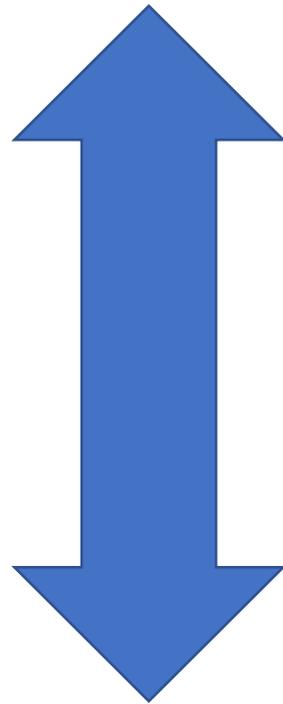
Least Restrictive Environment (LRE)

1. To the maximum extent appropriate children with disabilities are to be educated with children who are not disabled
2. Removal may only occur when education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily

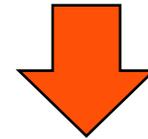
Continuum of Alternative Placements

Least Restrictive

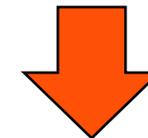
General Education Classroom



Special Classes



Special Schools



Most Restrictive

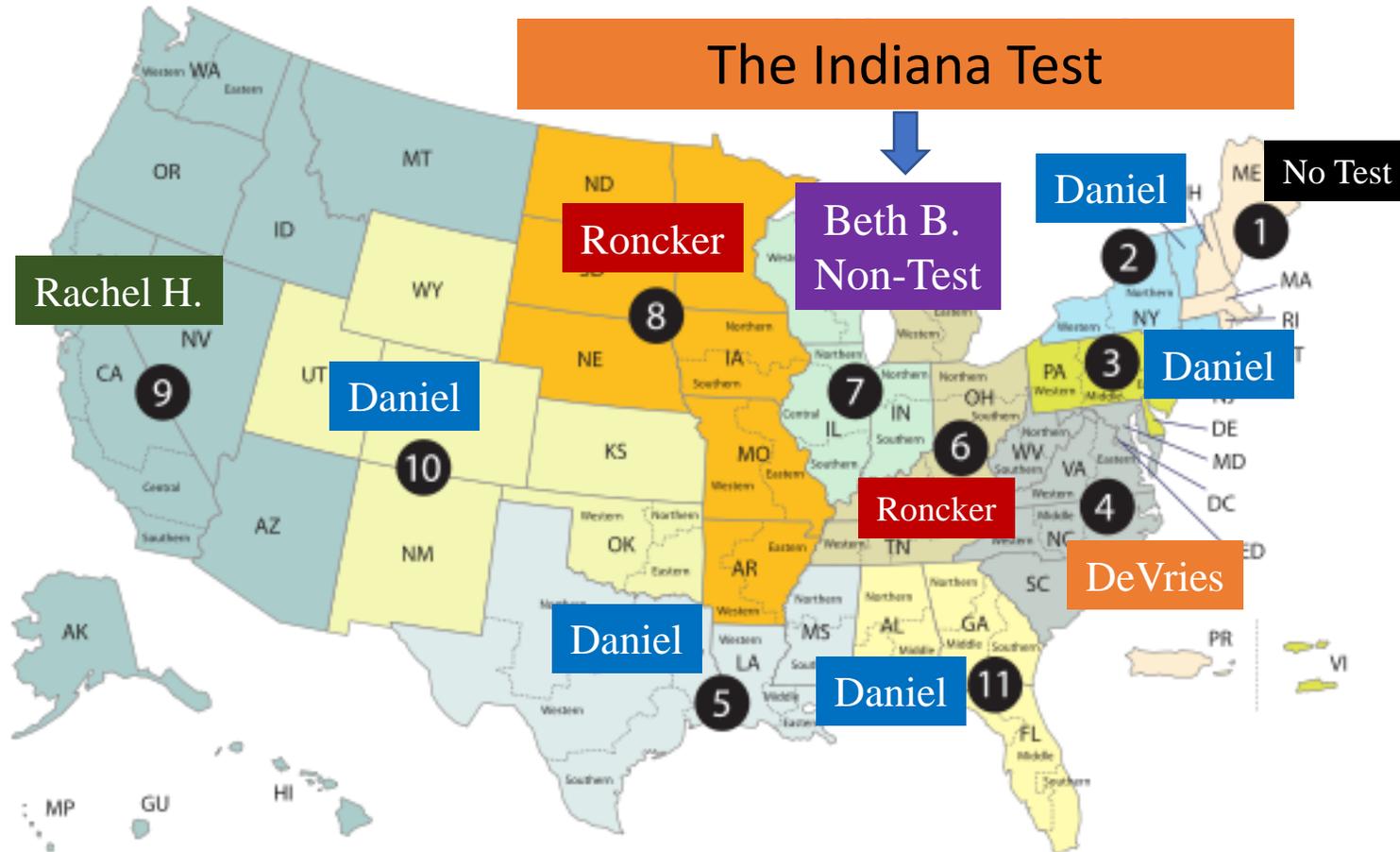
Hospital/Institution

Where are Resource Room Services in the Continuum?

Resource room and **itinerant instruction** are viewed as **supplementary services** provided in conjunction with general education placement (34 C.F.R. § 300.115(b)(2)(2006)).

LRE in the Courts

LRE Tests



Beth B. v. Van Clay
2823 F.3d 493 (7th Cir. 2002)

The Beth B. No Test--Test

- “Each student’s educational situation is unique. We find it unnecessary at this time to adopt a formal test for district courts to apply uniformly when deciding LRE cases. The law itself provides enough of a framework for our discussions.”
- “Instead we ask whether the education in the conventional school was satisfactory and, if not, whether reasonable measures would have made it so.”

“The FAPE provision and LRE provision are two sides of the same IEP coin. The first requirement is absolute... the second is relative. The LRE requirement shows Congress's strong preference in favor of mainstreaming, but does not require, or even suggest, doing so when the regular classroom setting provides an unsatisfactory education.”

“Beth was in class for about fifty percent of each day. Her academic progress was virtually non-existent, and her developmental progress was limited. Although the school district provided her with aides, communication devices, computerized books, and an individual curriculum, she was receiving very little benefit from her time there.”

“The (special) classroom, (included) reverse mainstreaming opportunities, as well as time spent with nondisabled peers in nonacademic classes, during special projects, lunch, and the like, was at an acceptable point along the “continuum of services” between total integration and complete segregation, and satisfied the requirement that Beth be mainstreamed to the maximum extent appropriate”

“In this case we can say with confidence that the Lake Bluff school district's decision to remove Beth from her regular school did not violate the IDEA's mandate to mainstream disabled children to the maximum extent appropriate”

Lessons from the Courts

Why Did LEAs Prevail?

- The LEA made good faith attempts at including the student in regular education
- Parents were involved in the process
- LEA maintained excellent documentation, indicating that the student did not benefit in the general education setting
- Students were educated in integrated settings whenever appropriate

Factors Arguing Against Placement in Regular Classrooms

- The student will **not receive** a sufficient educational benefit in a regular classroom, even with the provision of supplementary aids and services.
- Requires **so much** of the **teacher's time** and attention that he substantially interferes with the learning of others in the classroom.
- The student engages **in significantly disruptive behavior** which interferes with the education of classmates.
- Placement will require **so much** modification in the **curriculum** that the regular program would have to be altered beyond recognition.

Why Did LEAs Lose?

- LEAs failed to make good faith efforts to provide accommodations to keep the student in the regular education classroom
- LEAs failed to consider the full continuum of placements
- LEAs did not maintain sufficient documentation of their efforts

Strategies for Compliance

- Individualization-A student's needs and program drive the placement consideration (including use of supplementary aids & Services)
- Appropriateness-A student's special education must be provided in the LRE in which a student can receive an appropriate education
- Justify-When a student is placed out of the general education setting, the team must justify the placement in the student's IEP
- Continuum of Placements-Don't confuse LRE with any one placement
- Integration-When a more restrictive setting is used, integrate when possible

The Most Serious Placement Errors

Placement Error:
Predetermining IEP
Placement

Predetermination

- Predetermination occurs when a student's placement or program is decided by his or her IEP team prior to the IEP meeting and without parental participation
- Because predetermination excludes a student's parents from the placement decision it will likely constitute a denial of FAPE
- Definitive statements about a student's placement (e.g., "We always..."; "We never...") made before or during the meeting could constitute predetermination

Avoiding Predetermination

School personnel must not engage in any action that appears to make a decision on a student's program or placement prior to the student's IEP meeting

Preparation v Predetermination

Preparation for an IEP meeting by school district personnel would not result in a finding of predetermination when school personnel *are committed to allowing a student's parents* an opportunity to meaningfully participate in the process.

Doyle v. Arlington

(E.D.VA 1992)

“School officials must come to the IEP table with an open mind. But this does not mean that they should come...with a blank mind”

Placement Error:

**Placing a student prior to
determining programming
(AKA Shoehorning)**

Placement

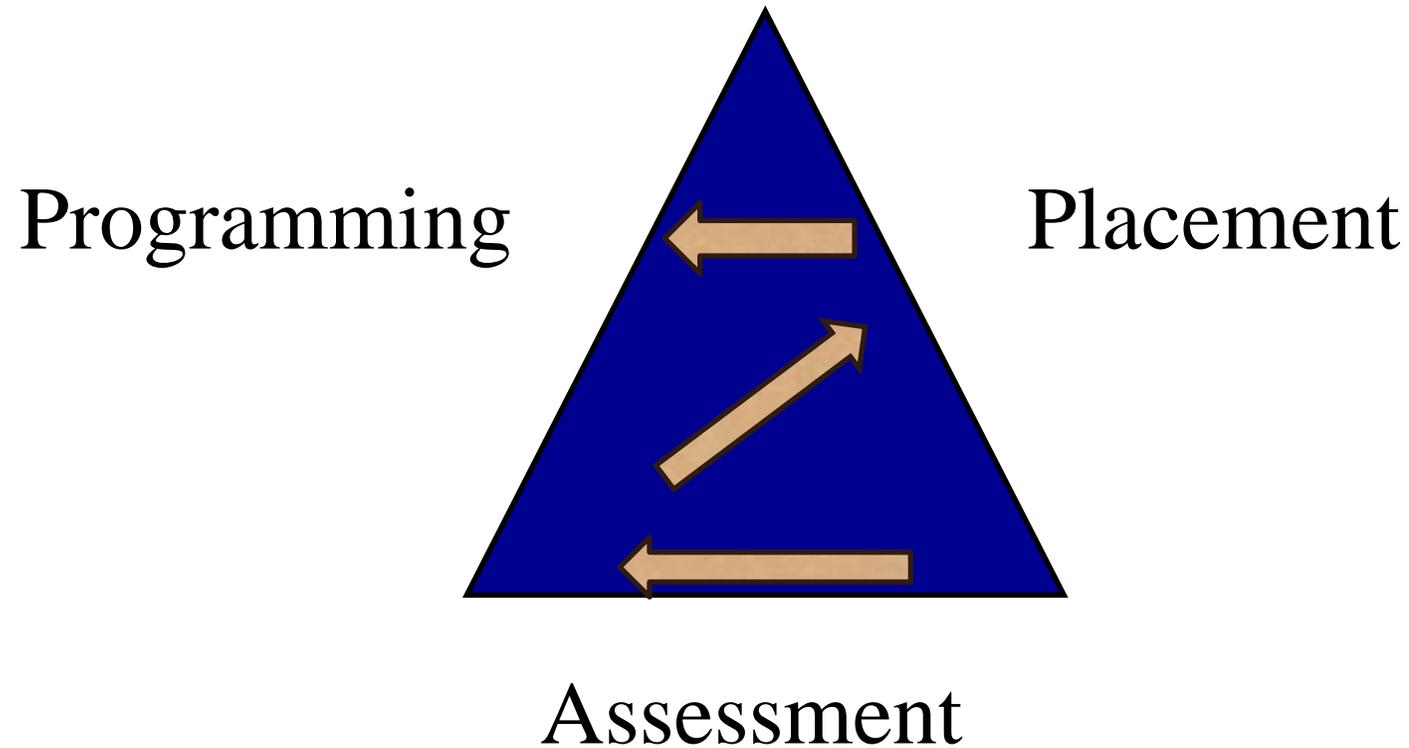
- The IEP must be developed before placement decision supplementary aids & supports, program modifications, positive behavioral supports & interventions in general education settings
- “Placement must be based on a student’s IEP” (34 CFR§ 300.116(b)(2)(2006).

Avoid Shoehorning

- Shoehorning: Deciding placement prior to determining annual goals and special education services, thus shaping a student's IEP to fit a particular placement
- Avoid shoehorning by not considering placement issues until the goals & services section of the IEP has been completed

Special Education Process

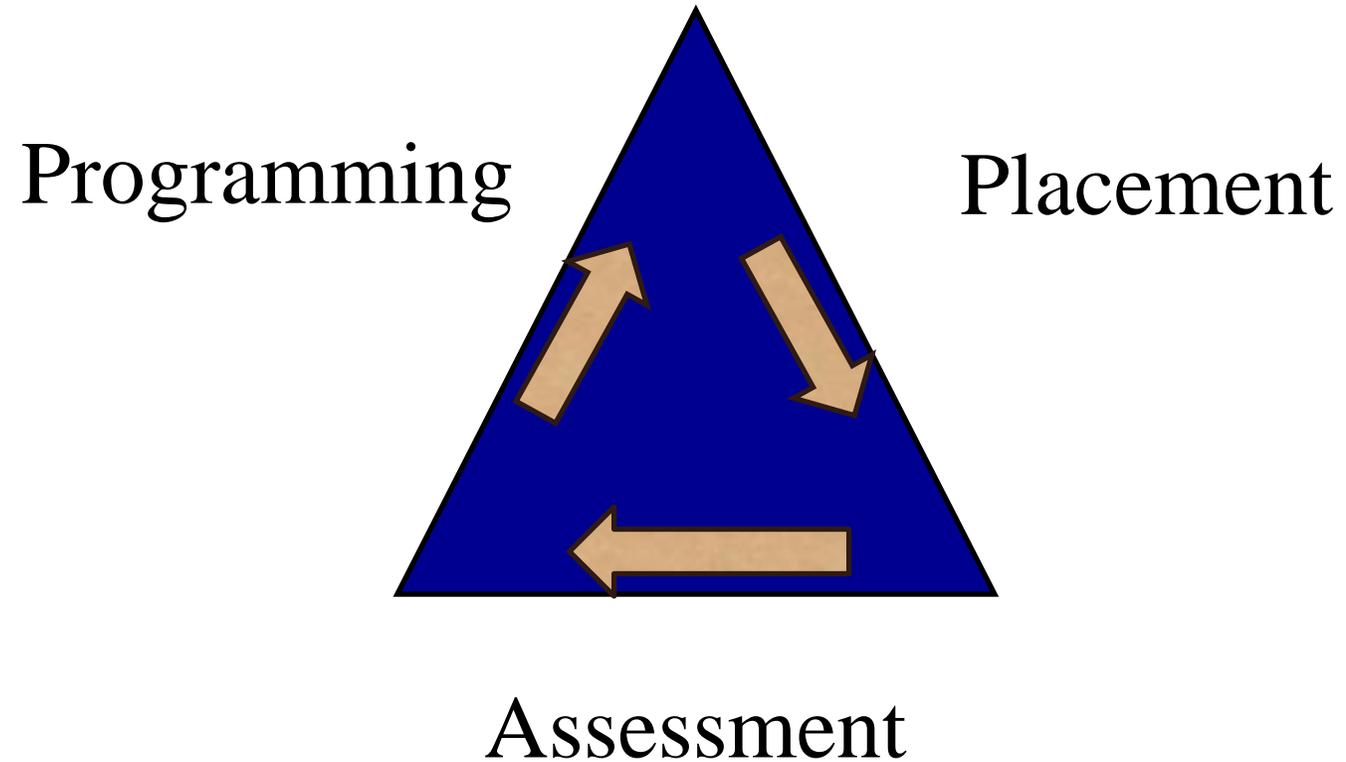
Shoehorning



Bateman & Linden, 2012

Special Education Process

The Right Way

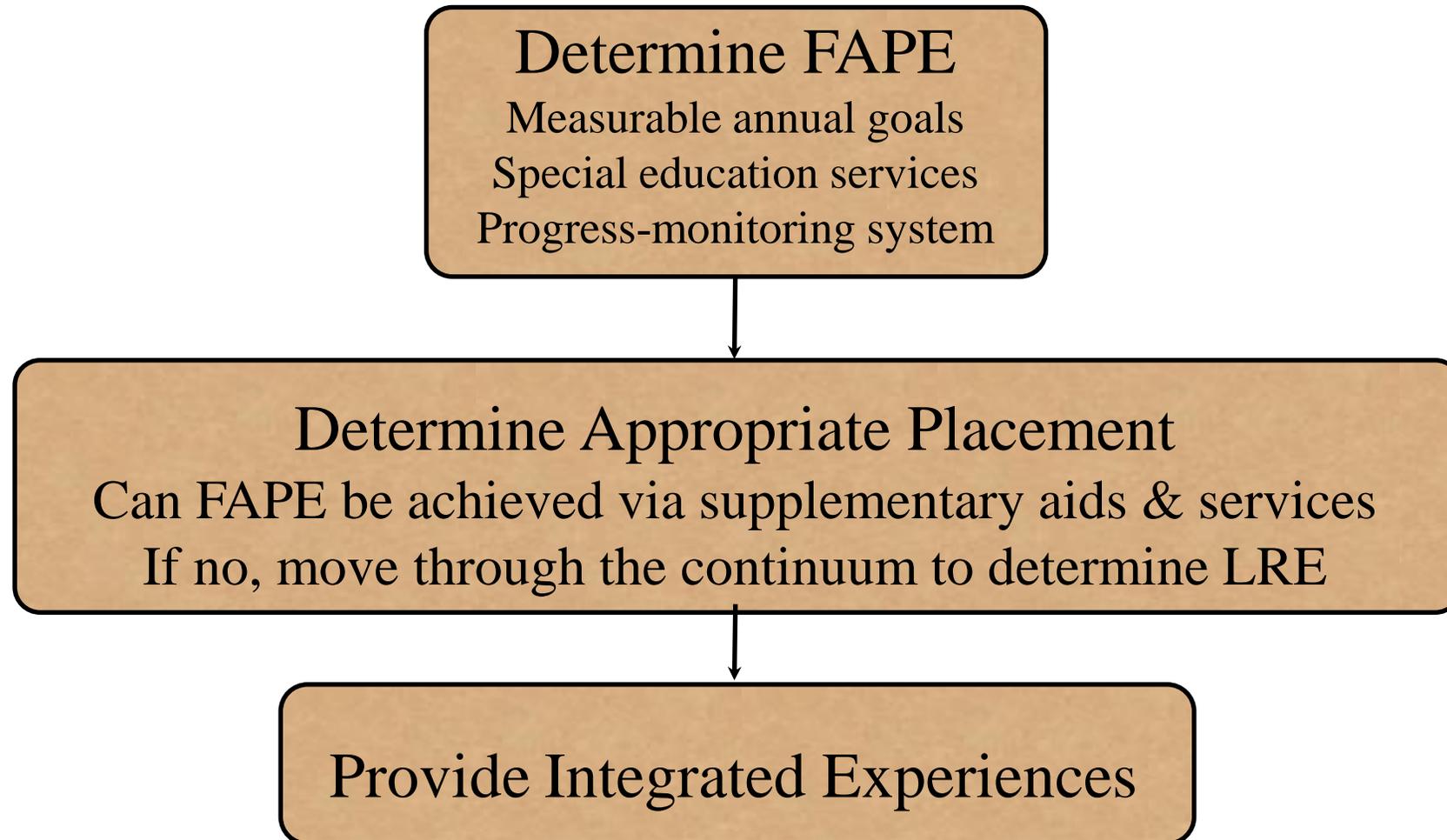


Placement Error:

**Failing to Provide Supplementary
Aids & Services**

**Placement Error: Failing
to Adhere to the
Continuum of Placements**

Placement Flowchart



Placement: Do

- Begin the placement decision process by first considering placement in a regular classroom with any necessary supplemental aids and services
- Consider placement requests from parents
- On at least an annual basis, make placement decisions based on the student's IEP
- Make placement decisions that are appropriate and based the student's individual needs and evaluation results
- Remember that the LRE mandate applies to nonacademic and extracurricular activities

Placement: Don't

- Predetermine a placement decision prior to IEP meeting and parental input
- Skip down the continuum of placements without justification and supportive data
- Make placement decisions based on a category or severity of disability
- Make placement decisions based on administrative convenience

How Does the Endrew F. Ruling Effect Placement Decisions?

- Question and Answer (Q & A) on Endrew F.
- Question 17: How does the Endrew F. decision impact placement decisions
- Answer: “Consistent with the decision in *Endrew F.*, the Department continues to recognize that it is **essential** to make **individualized** determinations about what constitutes appropriate instruction and services for each child with a disability and the placement in which that instruction and those services can be provided to the child. **There is no “one-size-fits-all”** approach to educating children with disabilities.” Rather, placement decisions must be individualized and made **consistent** with a child’s IEP

Questions or Comments

Thank You!!!!