

# LEAST RESTRICTIVE ENVIRONMENT

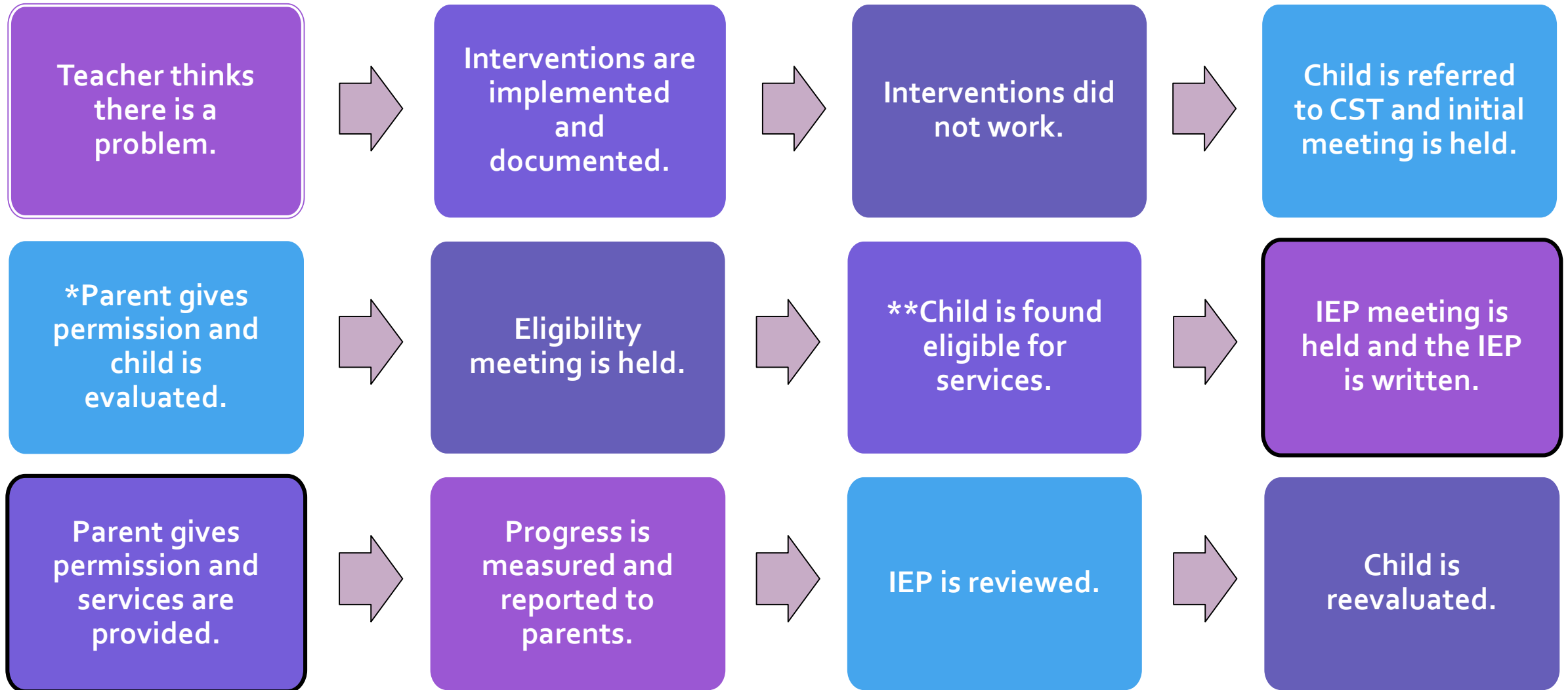
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Presented by Joy E. Durham & Kristin Patterson-Maas

# Purpose of Today's Session

- Briefly review and discuss the settlement agreement focused on inclusion established by the case- *Disability Rights N.J. v. N.J. Department of Education (2014)*;
- List and review relevant case law related to special education and the Least Restrictive Environment (LRE);
- Briefly review *Brown v. Board of Education (1954)* and the significance of equal access to education for all students;
- Review the 3 prong test established by *Oberti v. Board of Education (1993)* in determining placement of students in the general education setting;
- Review the N.J.A.C. regulations related to placement and LRE;
- Discuss and dispel the common myths related to LRE by reviewing relevant research related to LRE and placement; and
- Provide Child Study Teams and Teachers with tips and suggestions on implementation of LRE.

# The Special Education Process



# Icebreaker Activity: LRE Quiz!

1. **False**
2. **False**
3. **True**
4. **False**
5. **Five factors teams must consider:**
  - a) **Student's Present Level of Performance**
  - b) **Measurable annual goals and benchmarks or short term objectives**
  - c) **Special education and related services needed**
  - d) **Supplementary aids, supports and services and accommodations**
  - e) **Educational benefits to the student**

State	% of students with disabilities in general education 80% of the day or greater
Alabama	83.8
Connecticut	68.1
Delaware	67.2
Florida	70.0
Kansas	68.6
Maryland	68.4
Michigan	65.4
Nebraska	74.6
New York	58.2
Pennsylvania	62.4
Texas	66.2
<b>New Jersey</b>	<b>45.8</b>

# Disability Rights N.J. v. N.J. Department of Education (2014)

- Disability advocates alleged that the New Jersey Department of Education (NJDOE) excluded children with disabilities throughout the state from general education settings.
- The litigation resulted in a Settlement Agreement- [Civil Action No. 07-2978 \(MLC\)](#).
- The Settlement Agreement establishes a statewide system for NJDOE to:
  1. Access challenges facing specific school districts in their efforts to provide students with disabilities a free and appropriate public education in the least restrictive environment;
  2. Offer the school districts technical assistance and training to help them overcome these challenges; and
  3. Monitor the school district's progress.

# Chart of Relevant Legal Cases/Laws

Year	Case/Law	Relevance
1893	Watson v. City of Cambridge (MA Supreme Ct.)	"the weak in mind [could] not benefit from schooling"
1919	State ex rel. Beattie v. BOE (Wisconsin Sup. Ct.)	*Denied the education of a student with cerebral palsy
1954	<b>Brown v. BOE</b>	Segregation on the basis of race violated the Equal Protection Clause of the 14 <sup>th</sup> Amendment
1965	Elementary & Secondary Education Act (ESEA)	Federally funded primary & secondary education; emphasized access to equal education
1975	Education for All Handicapped Children Act (EHA)	Focused on access to education programs for students with disabilities
1982	BOE of Hendrick Hudson v. Rowley (U.S. Sup Ct.)	**Established the standard for FAPE
1990	Amendments to the EHA	***Renamed to Individuals with Disabilities Education Act (IDEA)
1993	<b>Oberti v. Board of Education</b>	3 prong test for determining placement in general education
1997	Additional Amendments to the IDEA	Shifted from "access" to providing "meaningful" programs
2004	No Child Left Behind Act	Participation on statewide assessments & HQT****
2014	<b>Disability Rights New Jersey vs. NJDOE</b>	NJ LRE Settlement Agreement focused on inclusion

# Brown v. Board of Education (1954)

- First significant court case to influence special education and segregation of students based on race.
- Consolidation of cases from 5 jurisdictions (Kansas, South Carolina, Delaware, Virginia & District of Columbia).
- Overturned Plessy v. Ferguson (1896) which set the standard for “separate but equal” schools.
- The ruling was unanimous.
- Supreme Court found that segregation on the basis of race violated the Equal Protection Clause of the 14<sup>th</sup> Amendment.

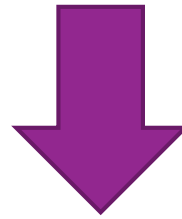




“Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.” (emphasis added)

Chief Justice Earl Warren  
*Brown v. Board of Education* (1954)

“To separate [black children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”



“To separate [students with disabilities] from others of similar age and qualifications solely because of their disability generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”

# Oberti v. Board of Education (1993)

- U.S. Court of Appeals for the Third Circuit (New Jersey is part of the Third Circuit).
- Parents of a child with Downs Syndrome, Rafael Oberti, sued the school board, challenging the decision to place Rafael in a separate special education program outside of the district.
- Court held that schools are prohibited from placing a child with disabilities outside the general education classroom if educating the child in the general education classroom with supplementary aids and support services, can be achieved satisfactorily.
- Established a three prong test for determining placement in the general education classroom.

# Oberti: Three Prong Test

Consideration must be given to the following factors when determining placement of a child with a disability:

- 1. Whether the student can be educated satisfactorily in a general education classroom with supplementary aids and services;**
- 2. A comparison of the benefits provided in the general education classroom and the benefits provided in the special education class; and**
- 3. The potentially beneficial or harmful effects which a placement may have on the student with educational disabilities or other students in the class.**

# What does the N.J.A.C. say about LRE?

(a) Students with disabilities shall be educated in the least restrictive environment. Each district board of education shall ensure that:

1. To the maximum extent appropriate, a student with a disability is educated with children who are not disabled;
2. Special classes, separate schooling or other removal of a student with a disability from the student's general education class occurs only when the nature or severity of the educational disability is such that education in the student's general education class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily;

# Has NJ adopted the Oberti Three Prong Test?

**Yes!**

Consideration is given to:

- i. Whether the student can be educated satisfactorily in a regular classroom with supplementary aids and services;
- ii. A comparison of the benefits provided in a regular class and the benefits provided in a special education class; and
- iii. The potentially beneficial or harmful effects which a placement may have on the student with disabilities or the other students in the class.

# What are Supplementary Aids & Services?

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



# What are some examples of SAS?

All students shall be considered for placement in the general education class with supplementary aids and services including, but not limited to, the following:

1. Curricular or instructional modifications or specialized instructional strategies;
2. Assistive technology devices and services as defined in N.J.A.C. 6A:14-1.3;
3. Teacher aides;
4. Related services;
5. Integrated therapies;
6. Consultation services; and
7. In-class resource programs.

# Continuum of Placement Options

General Education w/no Supplementary Aids or Services

General Education w/Supplementary Aids and Services (placement inside general education 80% or more of the school day)

Resource Support (placement inside general education between 40% and 79% of the school day)

Self-Contained Placement (placement inside general education less than 40% of the school day)

Separate Special Education Day School

Residential Placement

Home Hospital

Let's Play the  
LRE FACT or MYTH  
Game!!!!

Inclusion of students with disabilities will interfere or impinge upon the academic performance of students without disabilities.

**MYTH**

Students cannot be placed in a general education classroom unless they are functioning at grade level.

**MYTH**

Students in integrated educational placements make substantial progress in social competence, communication & social skills.

**FACT**

Students with disabilities show greater achievement and results in segregated settings.

**MYTH**

# LRE Decision-Making Activity

- Break into groups of 3-4.
- Review the Student Scenario.
- Answer the following questions:
  1. Can the student be educated in a general education classroom with the use of supplementary aids and services?
    - a) If yes, what specific supplementary aids and services would you provide to the student?
    - b) If no, identify the specific supplementary aids and services you considered and state why each of these is not appropriate to meet the student's needs in the general education classroom.

\*Use the following handouts to assist with your discussion and response: 1) Decision-Making Considerations When Discussing Placement in LRE and 2) Supplementary Aids & Services Checklist



# Materials Needed to Present

- ✓ Copy of the Least Restrictive Environment PowerPoint;
- ✓ LRE Icebreaker Quiz
- ✓ **Handout**- Exhibit 63- The 37<sup>th</sup> Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act (IDEA), published in 2015
- ✓ **Handout**- Supplementary Aids and Services Checklist
- ✓ **Handout**- Continuum of Placement Options
- ✓ LRE Myth or Fact Activity Cards
- ✓ **Handout**- Decision-Making Considerations When Discussing Placement in LRE
- ✓ **Handout**- Student Scenario- LRE Decision-Making Activity