

MITIGATING THE THREAT OF LITIGATION IN SPECIAL EDUCATION

Discover the federal laws and landmark cases that guide special education policies, explore the key threats to litigation, and identify best practices that minimize districts' legal entanglement and maximize student learning.



I WAS 22 YEARS OLD AND THREE MONTHS INTO MY FIRST YEAR OF TEACHING.

When I took my seat at the table and waited in silence for the rest of the multidisciplinary IEP team to arrive, I had no idea what was about to happen. The case manager had to get extra chairs to accommodate seating for the two attorneys, the child and family services caseworker, the court appointed special advocate, and the assistant principal.



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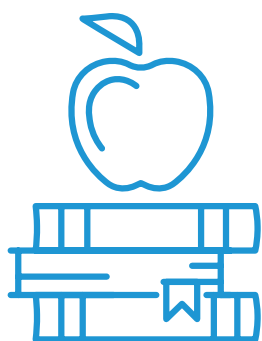
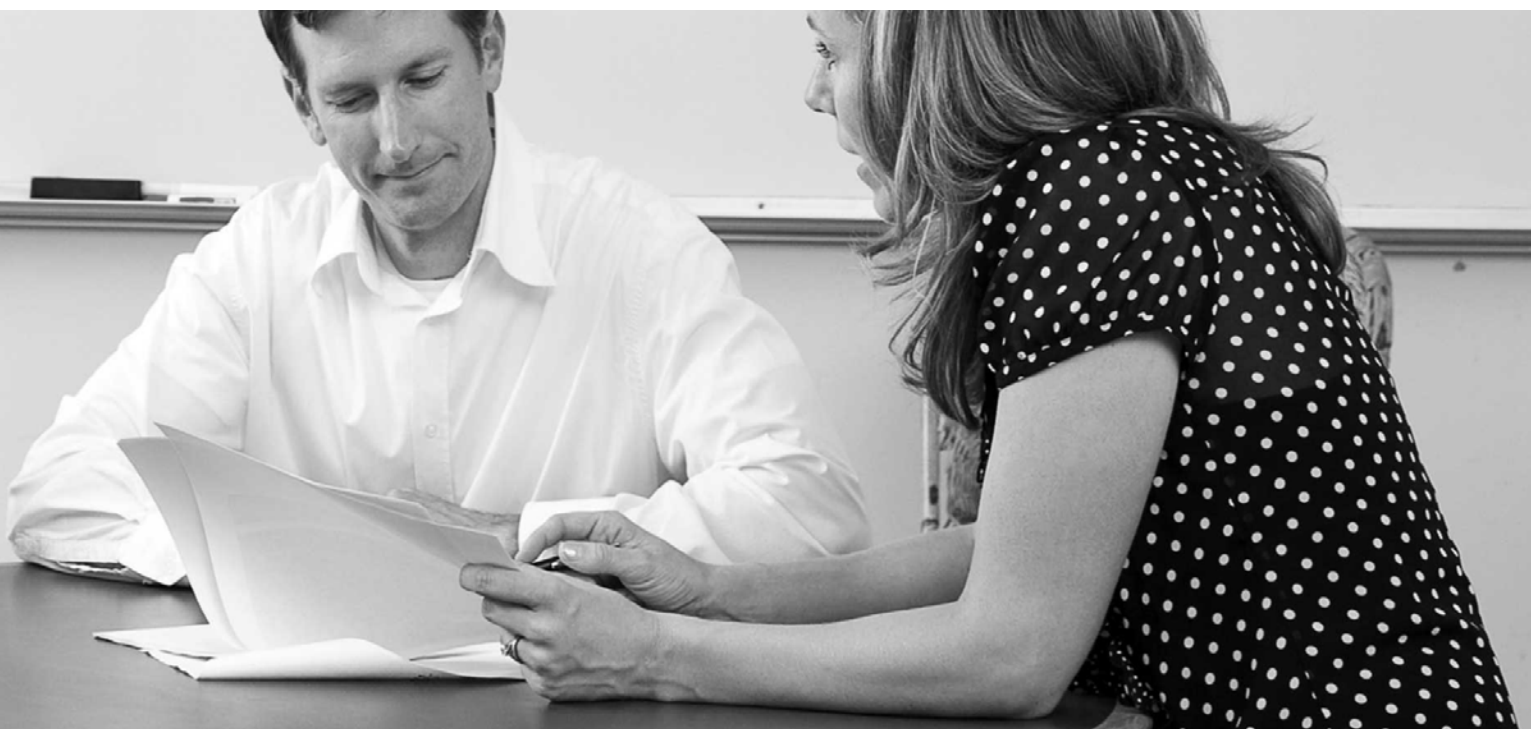
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When it came time to discuss my student’s progress towards his math goals, the student’s legal representation asked me question after question—

- Can you show us work samples that demonstrate his progress on this standard?
- What accommodations were provided?
- What percentage of his homework has he completed?
- Describe his behavior and affect in your class.
- What data do you have besides his unit test results?
- Tell us about how his parents supported his goals.

I answered as best as I could, but I had only *just* learned how to write a lesson plan a few months prior. Our school didn’t use any standardized curriculum, so I was learning to create my own materials that aligned with state standards (often late into the evening after a long day of teaching) at the same time I was learning how to backwards plan unit assessments, differentiate instruction, implement a behavior management system, collect data, and proactively engage families.

The case manager recorded every word I said. Both lawyers took their own notes.



Nearly 15 years later, I remember that IEP meeting like it was yesterday. It was contentious and exhausting. As a brand new teacher coming to the classroom through an alternative certification pathway, I still had so much to learn about the basics of running a classroom. Thankfully, the meeting ended with an agreeable path forward for all members of the IEP team, including and especially the family of my student.

This was my first IEP meeting with attorneys present, but it wouldn't be my last. As every special education leader knows painfully well, the threat of litigation is always present. Working through due process complaints is awful for everyone involved and it is financially and emotionally expensive.

Special education leaders *want* to uphold the laws that protect the rights of students with disabilities to ensure they truly have access to a free and appropriate public education (FAPE).

Yet, thousands of mediation requests, due process complaints, and state complaints are filed across the nation every year.

Story shared with permission by Kelley Spainhour, MAT, Sr Product Marketing Manager

In this guide, we cover the federal laws that guide special education policies, the key threats to litigation, and best practices that minimize districts' legal entanglement and maximize student learning.



FEDERAL LAWS THAT GUIDE SPECIAL EDUCATION RULES & REGULATIONS

In 2022, the number of students ages 3–21 who received special education and/or related services under the Individuals with Disabilities Education Act (IDEA) was **7.3 million**, or **15 percent** of all public school students.

Continue reading to discover the key legislative acts that guide the special education rules and regulations for these 7.3 million students. Failing to uphold these laws is at the heart of the threat to litigation in special education.

IDEA



IDEA is the nation's special education law. It protects the rights of students with disabilities by **mandating** the provision of a free and appropriate public education. Originally enacted in 1975 and most recently amended in 2015, IDEA maintains these 6 key provisions for students with disabilities:

1. Free and Appropriate Public Education (FAPE)

A [Free and Appropriate Public Education \(FAPE\)](#) is a fundamental right of students with documented disabilities. It guarantees that students are provided with educational services and supports that meet their unique needs at no cost to them or their families. Special education services may include specially designed instruction, related services, accommodations and modifications, an IEP, and more. One of the key components of FAPE is that students with disabilities are educated with their non-disabled peers to the maximum extent appropriate.

2. Appropriate Evaluation (AE)

[Appropriate Evaluation \(AE\)](#) refers to a thorough and comprehensive assessment process used to identify a student's specific educational needs and determine eligibility for special education services. It involves a multifaceted examination of a student's cognitive and academic abilities, strengths, weaknesses, and relevant factors to develop an accurate understanding of their unique learning needs. Informed parent* consent must be obtained before any formal evaluation may be conducted. [Categories](#) of disability eligibility include:

- Autism (AUT)
- Deafness (D)
- Deaf-blindness (DB)
- Developmental delay (DD)
- Emotional disturbance (ED)
- Hearing impairment (HI)
- Intellectual disability (ID)
- Multiple disabilities (MD)
- Orthopedic impairment (OI)
- Other health impairment (OHI)
- Specific learning disability (SLD)
- Speech or language impairment (SLI)
- Traumatic brain injury (TBI)
- Visual impairment, including blindness (VI)

3. Individualized Education Program (IEP)

An [Individualized Education Program \(IEP\)](#) is a personalized, legally mandated document outlining the educational plan for a student with a documented disability. It provides a statement of the student's present levels of academic achievement and functional performance, measurable annual goals related to the student's academic and functional areas of needs, classroom and testing accommodations, special education and related services, and more. In a nutshell, the IEP is the legal document that shows *how* a school will provide FAPE.

4. Least Restrictive Environment (LRE)

The [Least Restrictive Environment \(LRE\)](#) is the principle of educating students with disabilities in settings that are as inclusive as possible while meeting their individual learning and behavior needs. The LRE promotes placing students in environments where they can learn and interact with their non-disabled peers to the maximum extent appropriate.

5. Parent and Student Participation

[Parent and Student Participation](#) refers to the legal requirement that parents of students with disabilities, as well as the students themselves when appropriate, have the right to actively engage in the special education process. This includes attending meetings, contributing input to the development of IEPs, and being informed and involved in decisions related to their educational services and placement.

6. Procedural Safeguards

[Procedural Safeguards](#) encompass a set of rights and protections afforded to parents and students with disabilities. These safeguards ensure that families have access to information, can participate in decision-making processes regarding their child's education, and can resolve disputes through mechanisms like mediation or due process hearings. IDEA requires each State to clearly outline the administrative processes and options available to parents if they have a disagreement or complaint regarding.

* In all instances where the word "parent" or "parents" appear throughout this paper, the word is intended to include the legal guardians of the student who have educational decision-making rights. However, the phrase has been shortened to just say "parents" for the sake of readability.

WHEN A PARENT FILES A DUE PROCESS COMPLAINT, the root issue is typically tied to one of the previous-listed 6 key components of IDEA. However, there are a number of other laws related to disability rights that drive special education policy and regulations.



EVERY STUDENT SUCCEEDS ACT (ESSA)

ESSA was reauthorized in 2015 and replaced the Elementary and Secondary Education Act (ESEA), which was America’s longest-standing commitment to equal opportunity for all students. In its reauthorization, ESSA continues to provide support to students in low-income areas and in schools where subgroups, including students with disabilities, are making progress at disproportionate rates. [ESSA](#) includes the requirement of “[evidence-based activities, strategies, or interventions](#),” which impacts special education programming. ESSA makes it clear that the quality of curriculum and instructional practices is important.

ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF (ESSER) FUNDS

During the COVID-19 pandemic, Congress passed three key pieces of legislation (the CARES Act, CRSSA Act, and the ARP) to address the widespread economic fallout. The Elementary and Secondary School Emergency Relief (ESSER) Funds were a key part of the relief specific to K-12 education. [ESSER Funds](#) include allocations for vulnerable subgroups, including students with disabilities. They also include requirements that interventions provided to address learning loss be evidence-based as defined by ESSA. Ensuring curriculum and interventions are evidence-based is critical to maintaining compliance.

SECTION 504 OF THE REHABILITATION ACT OF 1973

Section 504 of the Rehabilitation Act of 1973 is a civil rights law and prohibits discrimination based on disability in any program or activity that receives federal funds. As recipients of federal funds, State Education Agencies (SEAs) and Local Education Agencies (LEAs) must adhere to Section 504 rules and cannot deny students with disabilities the opportunity to participate in or benefit from education. Section 504 also states schools cannot deny access to education as a result of physical barriers (e.g., must provide physical access through ramps, elevators, handrails, or other means, etc.).

A 504 Plan is different from an IEP, even though both provide protections and accommodations for students with disabilities. An IEP provides specially designed instruction and related services, whereas a [504 Plan](#) provides services and changes to the learning environment to enable students to learn alongside their peers.

LANDMARK CASES IN SPECIAL EDUCATION



“In these days, it is doubtful that any child may be reasonably 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 that must be made available to all on equal terms.”

– Chief Justice Earl Warren, writing for the unanimous United States Supreme Court, *Brown v. Board of Education*, 347 U.S. 483, 493 (1954)

It has been nearly 70 years since *Brown v. Board of Education*.

This landmark civil rights decision determined that a separate education for African-American children was not an equal education, concluding that “in the field of public education the doctrine of [‘separate but equal’](#) has no place and that ‘separate educational facilities are inherently unequal.’”

This decision provided parents of children with disabilities and disability rights activists the constitutional foundation to press for equal educational opportunities for all children, including those with disabilities.

Supreme Court decisions continue to shape case law about education and disability rights. Let’s look at a few of the most impactful cases that now guide implementation of special education laws and regulations.

KEY SPECIAL EDUCATION COURT CASES

Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982)

This was the first special education case decided by the Supreme Court. In this case, the Court ruled that an IEP must be reasonably calculated for a child to receive educational benefit, but the school district is not required to provide every service necessary to maximize a child's potential.

Irving Independent School District v. Amber Tatro, 468 U.S. 883 (1984)

The Court held that provision of clean intermittent catheterization was a "related service" under the IDEA and not a "medical service," because the service was necessary for the student to attend school. The services requested did not fall within the medical exclusion because they need not be performed by a physician. The Court noted that "Congress sought primarily to make public education available to handicapped children and to make such access meaningful."

Burlington School Committee v. Massachusetts Board of Education, 471 U. S. 359 (1985)

The Court established, for the first time, the right of parents to be reimbursed for their expenditures for private special education. This decision (together with the Court's decision in *Florence v. Carter*, described below), set the precedent that a school district may be required to reimburse parents for tuition and other expenses related to a private school placement when:

1. The IEP and placement offered by the school district were inadequate or inappropriate (in other words, where the school district failed to offer FAPE)
2. The parents' private placement was appropriate for their child's needs, and
3. The balance of the equities favors reimbursement.

Honig v. Doe, 484 U.S. 305 (1988)

The Court addressed IDEA's "stay put" provision, explaining that in enacting "stay put," Congress intended "to strip schools of the unilateral authority they had traditionally employed to exclude disabled students ... from school."

The Court also noted that the IEP is the "centerpiece of [IDEA's] education delivery system" and explained that "Congress repeatedly emphasized throughout the Act the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness."

Florence County School District Four v. Carter, 510 U.S. 7 (1993)

The Court discussed the standards pursuant to which a parent may obtain reimbursement for a private educational placement. The Court determined that reimbursement does not necessarily require that the private school meet the IDEA's definition of free appropriate public education. Further, the private school does not necessarily have to meet the state education standards.

Jacob Winkelman v. Parma City School District, 550 U.S. 516 (2007)

In this case, the U.S. Supreme Court determined that parents may pursue claims under IDEA on their own behalf, as the rights conferred to parents under IDEA exist independently from the rights of their child.

SPECIAL EDUCATION CASES IN THE NEWS IN 2023

New cases continue to sculpt the special education landscape each year. Earlier this spring, a school district in Michigan [made the news](#) for failing to provide FAPE for a student, Miguel Perez, who is deaf. Following legal proceedings, the district settled the claim under IDEA.

Perez then filed with the federal court for compensatory damages under the Americans with Disabilities Act (ADA). The federal court dismissed the Perez family's new case since the original claim was already settled under IDEA. After the Perez family appealed this decision, the U.S. Supreme Court overturned the lower court's ruling in Perez's favor, holding that an Americans with Disabilities Act lawsuit seeking compensatory damages for the denial of FAPE may proceed without exhausting the administrative processes of the IDEA because the remedy sought is not one IDEA provides.

The message of the Court was clear—**families can pursue every avenue of justice available to them.** This most recent decision reminds districts across the nation that it is of the utmost priority to provide a free and appropriate education to students with documented disabilities.

It is essential that schools work proactively to ensure they are meeting the needs of students with disabilities. Whether it's honing in on a vetted [evidence-based curriculum](#) that provides access to the general education, or updating the physical accessibility measures like handrails (for example), **it's always worth the investment.**



MITIGATING THE THREAT OF LITIGATION



Upset parents of children with disabilities don't go from 'frustrated during an IEP meeting' to 'full blown lawsuit' in a single step.

When a parent has a complaint about their child's special education services under IDEA, the administrative process typically involves a series of steps.

First, the family should attempt to resolve the issue by discussing it with relevant school personnel in an IEP meeting. If the concern remains unresolved, the parent may file a due process complaint with the State Education Agency (SEA), initiating an investigation and resolution process, including mediation from a neutral third party. If still dissatisfied, due process hearings or other dispute resolution mechanisms may be pursued, involving a formal hearing and decision by an impartial third party. Throughout this process, the rights and interests of the child are paramount. The end goal for both parties (the parents and the school district) is to ensure a fair and appropriate education. If there is no written settlement after the hearing, a [review period, appeal, and right to bring civil action](#) may follow. Throughout this entire process, the student has the right to maintain their current educational placement, commonly referred to as the 'stay put' clause.

Due process complaint, n.

1. A due process complaint is a letter/complaint filed by an individual or organization on matters of conflict related to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education (FAPE) to the child.



NOTE: IDEA requires that States have administrative procedures in the procedural safeguards that clearly outline the process for when a parent has a conflict related to the provision of FAPE. For example, some States may place mediation as a step in the process before filing a formal due process complaint.

BUILD BRIDGES, NOT BARRIERS

A Comprehensive Approach to Maintaining Compliance and Avoiding Legal Disputes

Reducing the threat of legal entanglement in special education requires a comprehensive approach that prioritizes clear communication and ongoing collaboration among the entire IEP team.



COMMUNICATE, COMMUNICATE, COMMUNICATE!

The importance of clear, specific, and ongoing communication cannot be overstated!

Consider all the ways you communicate with families, both written and verbal, formal and informal:

- Written policies and procedures (e.g., school handbook)
- Procedural safeguards according to state law
- Beginning of year introductory letters
- The Individualized Education Program
- Work samples sent home
- Feedback on online activities
- Progress notes sent home
- School communication app notes
- Phone calls, text messages, emails to parents
- Workshops for families
- In-person communication at drop-off, dismissal, other school events
- *And more –*

Understand that *each* of these communication modalities contributes to a family's perception of the school's commitment to their child. Notes, discussions, reports, etc., can and will be referenced during IEP meetings and in follow up conversations if there are disagreements.

So, from the very beginning of the school year, it is best practice to establish a culture of open and honest communication between school faculty and families. This will not only help everyone be on the same page with expectations, but will increase the likelihood of a disagreement ending with a successful mediation rather than a formal due process hearing.

Remember to assume the best and recognize that parents and teachers both have the student's best interest in mind.



ESTABLISH CLEAR AND TRANSPARENT POLICIES

IDEA requires State Education Agencies to develop and communicate clear special

education policies and procedures that align with federal and state regulations. Be sure to communicate Procedural Safeguards by providing a copy in the parents' preferred language.

It is also imperative to regularly review and update internal (building and department-level) policies to reflect best practices.

For example, consider 'District A' that was continuously finding itself on the edge of compliance because IEP meetings kept getting canceled or rescheduled. More often than not, the bare minimum number of attendees were scrambling to come together *right* before the due date approached. After the Special Education Coordinator took some time to review his team's practices, he realized the inconsistencies were a result of having no clear expectation of when teachers might be called to an IEP meeting, and parents often struggled to get off work in the middle of the school day.

The next school year, he established a schoolwide meeting cadence that included IEP and Eligibility meetings on Tuesdays and Fridays at either 8am or 4pm. Exceptions could be made if needed to accommodate a family, but with this adjustment, meeting compliance deadlines improved drastically!



CONDUCT TIMELY EVALUATIONS AND DEVELOP EFFECTIVE IEPs

Delivering a free and appropriate public education to students with disabilities starts with identifying students with disabilities. This may be done through [Child Find](#), the [Response-to-Intervention](#) process, or through the outcome of a parent- or school-initiated evaluation. Students with [moderate to severe disabilities](#), such as Autism or Intellectual and Developmental Disabilities (IDD), are often identified and found eligible at an early age (before starting Kindergarten).

Conducting comprehensive and timely evaluations to accurately identify learning needs not only ensures districts are maintaining requirements of IDEA to identify children in need of special education services, it also ensures the IEP team has adequate data to develop a truly individualized IEP.

Legally compliant and [effective IEPs](#) include specially designed instruction that is evidence-based and aligned to state standards. Students who participate in the alternate assessments typically require an [adapted core curriculum](#) to successfully access general education and grade-level aligned academic content. The IEP must include measurable annual goals, accommodations and modifications, related services, and more.

Remember, it is *imperative* to involve parents and the student (when appropriate) in the IEP development process.



REGULAR PROFESSIONAL DEVELOPMENT

At least annually, districts should provide professional development on special education laws and compliance rules for teachers, paraprofessionals, and administrators. Special educators need to have a clear understanding of the specific rules of IDEA (such as the requirement to provide prior written notice to parents a certain number of days in advance of any IEP meeting or proposed change to the IEP). Train staff in conflict resolution and effective communication skills to help diffuse arguments and resolve disagreements when possible.

Special education teachers also need regular professional development on effective instructional practices to meet the needs of their most complex learners. This may be delivered by a special education specialist, or, in some cases, [curriculum providers](#) support in coaching and training teachers.

CONFLICT RESOLUTION AND MEDIATION



The administrative processes in IDEA include a requirement for clear procedures for addressing disputes and conflicts. Mediation should be offered as an alternative to litigation to resolve disagreements, and ideally, frequent communication and a collaborative environment will prevent most, if not all, disagreements from rising to the level of litigation. When and if the parent files a complaint, be sure to maintain neutral mediators who are knowledgeable about special education laws.



LEGAL CONSULTATION AND COMPLIANCE MONITORING

To establish a culture of accountability, school districts should prioritize ongoing compliance monitoring. Seeking legal guidance from special education attorneys or consultants is essential to successfully navigating detailed policies and regulations—which are subject to change as legislation is updated. Legal professionals can do periodic reviews of documentation, identify potential areas of improvement, and minimize risks associated with non-compliance.



RECORD KEEPING AND DOCUMENTATION

It is important to maintain accurate and organized records of student work (e.g., worksheets completed during class), summative assessments, IEPs, accommodations provided, progress monitoring notes, and communication with the family. Many case managers utilize IEP binders (one for each individual student) to compile and organize this information.



FAMILY AND COMMUNITY ENGAGEMENT

When families trust a school, they are more likely to give the benefit of the doubt when there is confusion about something in the IEP or if a disagreement arises. Establishing trust doesn't happen overnight. It requires a long-term, community-centered approach. School leaders should create channels for families to share feedback and concerns to demonstrate the school genuinely wants to hear all voices.

Some districts offer monthly family workshops or community-centered events to boost engagement. For example, consider offering a workshop on supporting early literacy initiatives at home, or another workshop on strategies for parents to help their children concentrate on homework at home.

Be sure to include education about parents' rights in the special education process in the parent engagement initiatives. It is critical for parents to understand their options when they disagree with the IEP team or if they have a question or a complaint.



REGULAR PROGRAM EVALUATION AND IMPROVEMENT

Regular program evaluations within special education departments help leaders identify areas for compliance improvement and contribute to positive, measurable outcomes for students.

By systematically reviewing program components (e.g., teacher development, eligibility processes, pre-IEP meeting collaboration, other) and outcomes (e.g., teacher effectiveness data, student academic performance data, graduation data, other), special education leaders can identify large scale strengths as well as areas that may be vulnerable to litigation.

Regular program evaluation also facilitates a continuous cycle of improvement, such as the adoption of new teaching methods or curriculum to better serve the diverse needs of students receiving special education services. Ultimately, such evaluations contribute to an ongoing commitment to excellence and the delivery of high-quality education that empowers every student to reach their full potential.



"enCORE is by far the best curriculum that I've used in my 26 years of teaching. I love that it has all four subject areas. It is very much aligned to the standards. I can honestly say that even though it may seem above what we think our students can do, they actually can learn and are successful."

– Wandalyn J., Teacher, SC

CONCLUSION



Mitigating the threat of litigation in special education requires a comprehensive approach that prioritizes collaboration and ongoing communication among the entire IEP team, and adherence to legal and ethical standards. Educators, administrators, families, and legal professionals must work together to create an inclusive and supportive educational environment that addresses the unique needs of complex learners.

Being proactive is key!

Special education leaders must select an appropriately challenging core [curriculum](#) for students with disabilities and ensure it is evidence-based and aligned with state standards so that students have access to general education content. An effective curriculum also provides multiple opportunities for special education teachers to gather specific, accurate data about student performance on learning objectives, IEP goals, and state standards on a regular basis.

TeachTown's [enCORE K-12](#) does just this. With the support of automated data collection and easy reporting options that demonstrate usage, growth, and mastery of standards, teachers and families can be on the same page about student progress. *Remember, the annual IEP meeting should never be the first time a parent hears of their child's academic or behavioral challenges.*

Finally, districts that work to foster a culture of empathy through culturally competent family engagement can reduce the likelihood of legal disputes. By focusing on the best interests of the students and promoting a cooperative, transparent approach, school districts and state education agencies can create an environment that upholds the rights of all students and minimizes legal conflicts.



Scan the QR code to learn how TeachTown can work in *your* district.



WHAT OUR CLIENTS ARE SAYING

"My students' reading comprehension has skyrocketed since introducing enCORE's leveled adapted books and leveled worksheets. They make it so easy for students to understand, participate, and learn because they are tailored to their individual abilities."

– Brittany P. W., Teacher

"We ultimately chose TeachTown because there truly wasn't anything else like it! The alignment provided with our state standards is unheard of for national programs within Texas. The access it provides our students to their grade level content defines what access should look like in a self-contained classroom.

Our teachers are already reporting significantly less time spent preparing materials and lesson planning within weeks of implementation, and our students are elated with the activities and success they are experiencing. After years with a "competitor," our eyes have been opened to the possibilities created by bringing TeachTown to our district. Our teachers could not be any more excited and our students are LOVING it!

We will continue to sing the praises of TeachTown to anyone who asks, so please share our experience!"

– Schuele B., M.Ed., Coordinator of Special Education & Instruction, TX

"Our students are very willing to sit down and do the sessions on TeachTown. They enjoy it, they laugh, they smile, they're learning, and the data is indicating that there has been growth in their learning!"

– Renee M., Teacher



Leading provider of K-12 standards-based, adapted core curriculum

Our suite of special education solutions offers students with moderate to severe disabilities equitable and inclusive access to the general education curriculum and the individualized interventions that support their success. www.TeachTown.com