

Class 2

Disability rights

The legal basis
for inclusive learning

Legal foundation

The term “inclusion” isn’t in the law.

BUT ... There is a legal foundation for inclusive learning, supported by the US Departments of Education and Health and Human Services

IDEA – Equal education opportunities

IDEA – Natural environments (Part c)

IDEA – Least restricted environment, first placement option is regular

classroom, with support

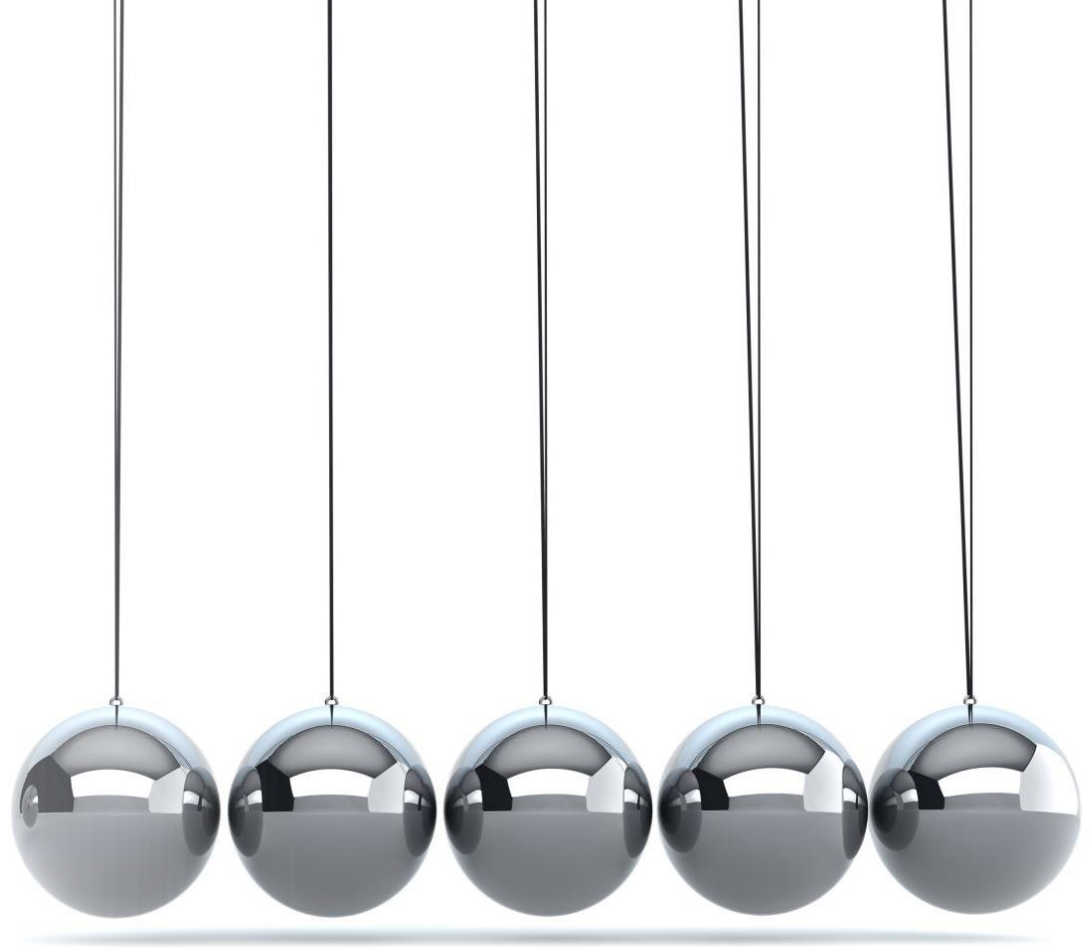
ADA & Section 504 – Prohibit discrimination based on disability

Section 504 – “Equal education opportunities” in “most integrated setting appropriate”

ADA: “Equal opportunity to benefit”

**When
education
was only
for some ...**

And its lingering effects



Many were shut out of education

Into 1970s, students were assessed for presumed potential and classified:

Educable	Trainable	Custodial
<ul style="list-style-type: none"><li data-bbox="481 676 894 872">• Able to learn simple academics	<ul style="list-style-type: none"><li data-bbox="1031 676 1444 1015">• Able to learn some daily care, or manual skills	<ul style="list-style-type: none"><li data-bbox="1582 676 1995 872">• Untrainable; require long-term care

The buckets were tied to IQ scores and assumptions/bias about ability. Many children were excluded from education on basis of disability.

In 1960s and beyond

Case law

- Court cases challenging exclusion
- Changes in state law

Civil rights

- 3 federal laws pass affirming disability access

Protection

- Rehabilitation Act of 1973 (“Section 504”)
- Education for All Handicapped Children Act, 1975
- The Americans with Disability Act, 1990

Section 504 and the ADA

- **Rehabilitation Act of 1973, Section 504**
 - US government said: You can't discriminate based on disability
 - Introduced term "free and appropriate public education"
 - Applies when programs get federal funding
- **Americans with Disabilities Act**
 - Expanded on the Rehabilitation Act of 1973
 - Applies to public and private settings – though not religious ones
 - Broad civil rights bill

The ADA and Section 504 prohibit discrimination because of disability. Federal regulations require funding recipients to provide **equal educational opportunities** for children with disabilities in the **most integrated setting appropriate** to the child's needs.

504 and ADA, continued

This means public schools cannot discriminate against students with disabilities. Students with disabilities must get equal access and opportunity to benefit.

It also means:

- Most private programs
- All publicly funded but privately run programs (like Head Start and ECEAP)
- All publicly run programs (school district, city-run, etc)

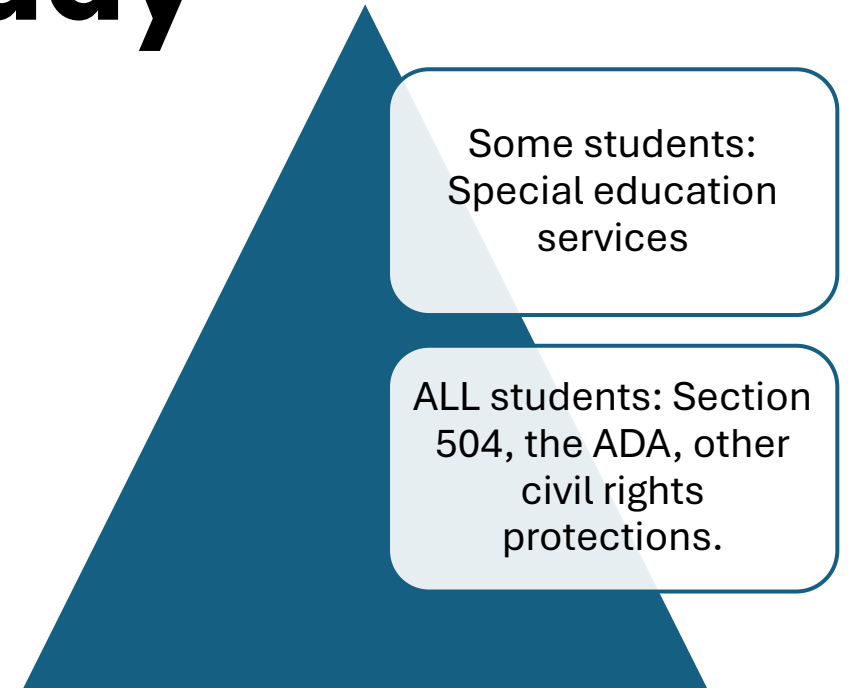
... cannot discriminate based on disability. They cannot deny access because a child is disabled. They cannot require children with disabilities to enroll in a segregated class, school, or program.

IDEA is not the only protection

- The Education for All Handicapped Children Act (later renamed the Individuals with Disabilities Education Act, or IDEA) applies to students with certain disabilities who require individualized instruction.
- If a child does not qualify for IDEA, or their parents decline special education services, Section 504 and the ADA still apply.
- If the child qualifies for IDEA and uses special education services, Section 504 and the ADA also STILL APPLY.
- IDEA includes the concepts of:
 - Least restricted environment
 - Individualized education programs (IEPs)
 - Parents are part of decision-making

Key takeaways for today

- There is anti-discrimination law to protect children with disabilities from bias.
- The law favors natural settings. Services travel to the child.
- The presumed setting is the one children would be if they did not have a disability. There needs to be a reason, backed up by data and research, to remove them.
- IEPs are person-centered. They are about making education accessible.
- Parents have an important role. The IEP team is not just made up of school staff. Parents are part of the IEP team. Parents have valuable insight needed to evaluate what's working.



Disability rights: Public Education

1954

↑ **Brown v Board of Education:**
Segregation is illegal.

1972

↑ **P.A.R.C.** case: Consent decree sets framework for special education. **Mills** case: Children can't be denied education because of "handicaps or deficiencies." Insufficient funds is no excuse. More cases followed.

↓ 1965

Elementary and Secondary Education Act.
Funds for "children with handicaps"

↓ 1973

Rehabilitation Act of 1973. Its **Section 504** defines the rights of individuals with disabilities to participate in, and have access to, program benefits and services that receive federal funding

→ 1975

Education for All Handicapped Children Act passes. Later updated and renamed the **Individuals with Disabilities Education Act**. All public schools that accept federal funding must provide a free appropriate public education for children with disabilities. Creates the program of special education. **1986** - Part C/0-3 services added. **2004** - Last update. Requires forms for IEPs, notice of parent rights/procedural safeguards, and prior written notice.

1990

↑ The **Americans with Disabilities Act**. Title II prohibits discrimination in state and local government programs, services, and activities. "Equal opportunity to benefit."

← **IDEA 2004**

The Legal Specifics

IDEA, Section 504, ADA



Section 504 and ADA

Right to equal access & accommodations

Section 504 & the ADA

Civil rights laws focused on anti-discrimination and access

They use a broader definition of disability than IDEA:

- Physical or mental impairment that substantially limits a major life activity or bodily function

Section 504, Rehabilitation Act of 1973

Prohibits any entity that receives federal financial assistance from discriminating on basis of disability

Settings:

- All public schools
- All public and many private preschools and child-care centers

If they receive federal funds, then Section 504 applies

Obligations under Section 504

- In public settings: free and appropriate public education
- Equal opportunity to participate and benefit; most integrated setting
- Auxiliary aids where necessary
- Private schools do not have to substantially modify their programs to provide access to students with disabilities
 - Must allow “minor adjustments” to accommodate access

Obligations under Section 504

Under Section 504, “free and appropriate public education”:

- » "Provision of regular or special education and related aids and services designed to meet the student's individual educational needs **as adequately as the needs of nondisabled students are met**

Inclusion under Section 504

- Students with disabilities and students without disabilities must be **placed in the same setting, to the maximum extent appropriate** to the education needs of the students with disabilities.

Inclusion under Section 504

- A recipient of federal funds must place a person with a disability in the **regular education environment**, unless it is demonstrated by the recipient that the student's needs cannot be met satisfactorily with the use of supplementary aids and services.
- Students with disabilities must **participate with nondisabled students** in both academic and nonacademic services, including meals, recess, and physical education, to the maximum extent appropriate to their individual needs.

The Americans with Disabilities Act – Passed in 1990

- **Prohibits discrimination** on basis of disability by all public entities and places of public accommodation, **regardless of funding**
- **Title II:** Applies to programs, activities, and services operated by state and local governments, including school districts
- **Title III:** Applies to places of public accommodation, including private schools and private preschools and family- or center-based childcare
 - Religious entities are exempt from ADA regulations

Obligations under ADA

- Must provide services in **most integrated setting** appropriate. Cannot exclude except in case of direct threat to health and safety
- Integrated settings are those that provide individuals with disabilities **opportunities to live, work, and receive services in the greater community, like individuals without disabilities**
- Must offer “reasonable accommodations”

Inclusion under ADA

- Title II of the ADA **prohibits discrimination** by public entities and protects children with disabilities from unlawful discrimination in programs, activities and services operated by state or local governments, including public school districts.
- Title II provides that **no qualified individual with a disability shall**, by reason of such disability, **be excluded from participation in or be denied the benefits** of such services, programs or activities of a public entity, or be subjected to discrimination by such entity.

Inclusion under ADA

- Title II applies to the services, programs, and activities of all state and local governments throughout the United States, including their early childhood programs.
- Title II further requires public entities to provide services in the **most integrated setting appropriate** to the needs of individuals with disabilities. Integrated settings are those that provide individuals with disabilities **opportunities to live, work, and receive services in the greater community, like individuals without disabilities.**

Individuals with Disabilities Education Act (IDEA)

Transforming the System

Education for All Handicapped Children Act – 1975

- Goal: Provide students with disabilities the same opportunity for education as children without disabilities
- Rationale: To access education, some students need supports and specialized instruction
- In addition to a free appropriate public education (FAPE), qualifying students have right to the least restricted environment (LRE)
- Students get an Individualized Education Program (IEP)

Parents are part of the IEP team

- Parents are equal members of the IEP team
- You have insight into your child's strengths, struggles, and development. Your information is valuable
- The school can't develop an IEP without you. (No "predetermination").
- The IEP team can't change a placement without giving you a chance to challenge

IDEA: The 'how' of access

Find children and work with parents to design appropriate services so they can access education

- Early intervention services added in 1986

Child Find: School districts are required to locate, identify, and evaluate *all* children with disabilities, birth – 21

- No need to fail first

Support from the start

IDEA honors key role of early intervention and inclusion

- Part C: Early intervention for infants and toddlers
 - Focus on comprehensive care, including the family
 - Provided in natural environments. Services go to child
- Part B: Special education services for children ages 3 – 21
 - “FAPE” (free and appropriate public education)
 - “LRE” (least restricted environment)

Sec. 300.114 LRE requirements

(a) General.

(2) Each public agency must ensure that—

(i) To the **maximum extent** appropriate, children with disabilities, including children in public or private institutions or other care facilities, are **educated with children who are nondisabled**; and

Sec. 300.114 LRE requirements

(a) General.

(2) Each public agency must ensure that —

(ii) **Special classes, separate schooling, or other removal** of children with disabilities from the regular educational environment **occurs only if** the nature or severity of the disability is such that **education in regular classes with the use of supplementary aids and services cannot be achieved** satisfactorily.

Least Restrictive Environment



First placement option: Always regular classroom

- Full range of aids and services to support
- Modifications do not require separation

Continuum of options must be available

- Should allow participation with peers in general education curriculum and non-academic activities to maximum extent appropriate

LRE, continued

- A child with a disability is **not removed** from education in age-appropriate regular classrooms **solely because of needed modifications** in the general education curriculum
34 CFR Sec. 300.116(e)

Difference of interpretation:

Many family attorneys say LRE is not fluid. It is not "what is appropriate for the child."

Rather, LRE is the general education classroom, with support, as needed.

That is a legal concept, and it is fixed in law.

If that placement doesn't work, the IEP team must consider an alternative placement.

But an alternative placement is not "LRE." It is a factor needed to ensure access to a free and appropriate education.

A service, not a place

- No one must “earn” a right to placement in a general education setting
- The primary purpose of special education is to support the child so they can be in a general education setting. Special education services supplement, they do not supplant
- An IEP is a legal document governed by IDEA. It spells out the services, supports and settings.

Oberti v. Board of Education (1992)

“[A child] should **not have to earn his way into an integrated school setting by first functioning successfully in a segregated setting. Inclusion is a right, not a privilege** for a select few.

Success in special schools and special classes does not lead to successful functioning in an integrated society, which is clearly one of the goals for IDEA.”

– Opinion of the Court, Becker, Circuit Judge
Oberti v. Board of Ed. of Borough of Clementon School District, 1992

Special Education Services in Preschool

They must offer LRE.

What is a regular class / program in preschool?

Per federal and state rule:

- General education environment refers to education in a “regular early childhood program with at least a 50 percent non-disabled peers,” regardless of whether the LEA* operates public preschool programs for children without disabilities

*LEA stands for local education agency
– In Washington these are Tribal School Compacts; a local school district; or a charter school

Community options for pre-K

School districts must ensure that a free appropriate public education is provided in the least restricted environment, **regardless** of whether they operate a general early childhood program.

This may include providing services in public or private early childhood programs, including Head Start, ECEAP, or other community programs.

- 0-3/ESIT supports go to the child. This is the same concept.

Children with IEPs make up about 12% of ECEAP preschool enrollment in the state.

- All children who qualify for special education services are eligible for ECEAP (early childhood education and assistance program).

Special education in state law

Protections came before federal law

Washington special education law predates

IDEA

Washington passed the Educational Opportunities for Handicapped Children in 1971 (RCW [28A.155](#))

“All children with disabilities as defined in **RCW 28A. 155.020** shall have the opportunity for an appropriate education at public expense as guaranteed to them by the Constitution of this state and applicable federal laws.”

Individualized Education Program (IEP)

Determines placement

Transitioning to Preschool

IFSP: From infancy through age 2, children who qualify for services under IDEA have an **Individualized Family Service Plan** (ISFP)

- Centers the child *and* the family to support development
- Includes early intervention services and supports
- Services intended to be provided in the child's "natural environment"

IEP: Beginning in preschool (ages 3 to 21), children who qualify for supports and services under IDEA receive an **Individualized Education Program** (IEP)

- » Focuses on the individual child and their educational needs
- » Includes special education and related services, modifications, and supports

IEPs – A team approach

The **Individualized Education Program** is a blueprint for teaching and supporting a student.

It lays out what specialized instruction, supports, and services the student requires to access general education, and where those services will occur

- The IEP team creates the IEP. The parent or guardian is an important member of this team. In later years, the team should include the child receiving services.

The IEP is a legal document

- “Get it in the IEP”
- You can include elements that promote inclusion
 - Example: Training staff so they can better support your child
- The IEP drives placement, not the other way around

Linked to standards

Become familiar with state learning standards, so you understand what “general education” entails

Your child should have access to social emotional AND academic learning. SEL is foundational to academic learning.

In later years, your child should have access to the opportunity to earn a high school diploma

"Appropriate" is subjective

Generally, IEP teams should create challenging and ambitious expectations, goals, and services for all students

What is an appropriate education?

“Some educational benefit”

– Hendrick Hudson District Board of Education v. Rowley (1982)

“Appropriately ambitious in light of [the child’s] circumstances”

– Endrew F. v. Douglas County School District (2017)

Remember – special education services are supposed to make general education accessible. Under Section 504 and the ADA, Title II, children with disabilities must get an equal opportunity to benefit.

Bias in the system

Your child has the right to accommodations and modifications.

- Keep on mind, those can limit what your child gets access to.

Make sure learning goals are appropriately ambitious.

Your child is in a system still influenced by bias. You need to be able to navigate that while also pushing it to change

LRE in preschool

Each school district must provide:

- Free appropriate public education
- In the least restrictive environment (50 – 50, minimum)
- To every child with a disability in its region

This applies regardless of whether the school district inclusive early childhood programs

Your Child's IEP: When You Disagree

What Are Your Options?

What to do when you disagree

1. Ask for prior written notice
 - What is the rationale for the decision?
 - Does it align with the law and research? With IEP goals? Does student data support it?
 - When you know the rationale, you can respond.
2. You can request a meeting or administrative hearing to discuss concerns
 - This is an opportunity to speak with a district representative

What to do when you disagree

If needed, you can file a community complaint and / or due process request

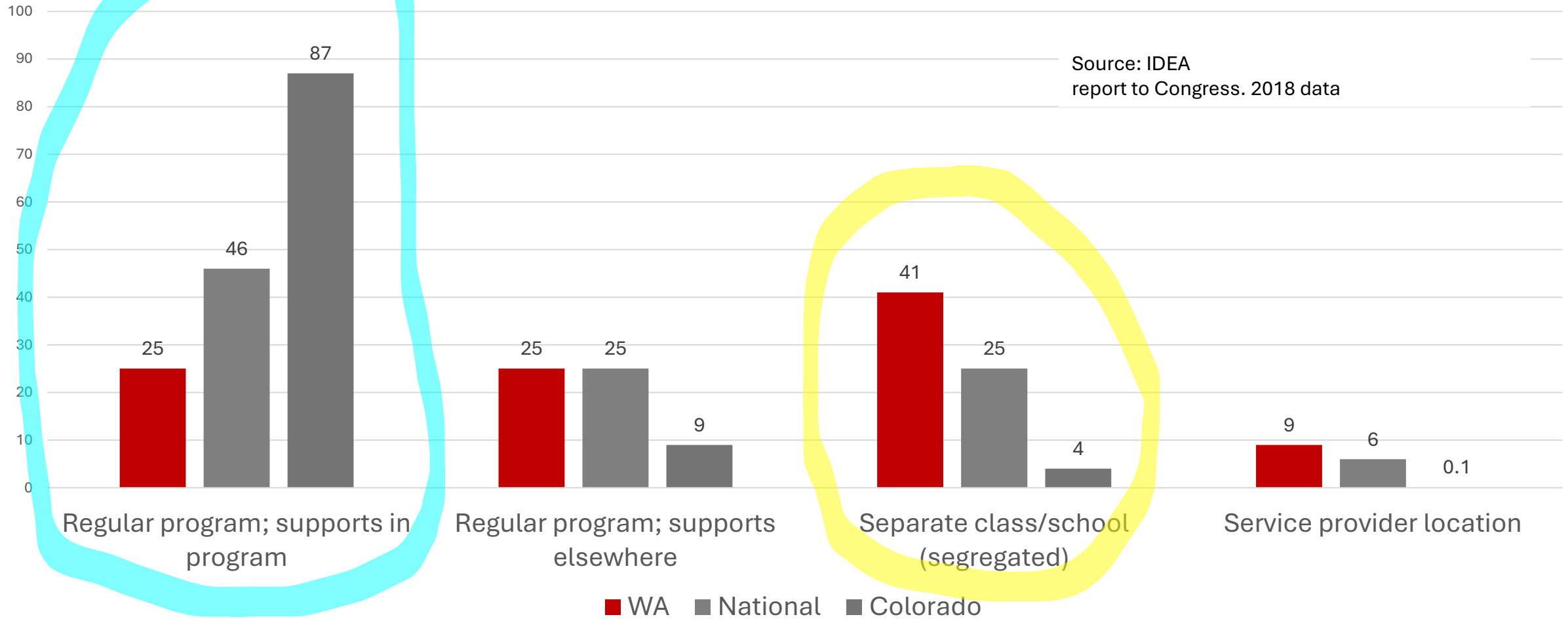
- A complaint will be investigated by the Office of Superintendent of Public Instruction (OSPI)
 - If OSPI finds cause, usually training is ordered for staff.
- You can request mediation, a less formal option than due process.
- You can file for due process. This is a formal, legal challenge. It provides you an opportunity to present your case to an administrative law judge.

Oversight

- Local Education Agencies are responsible for implementing IDEA
- Your school board is the governing entity, with OSPI overseeing compliance
- Programs offered, outcomes, and quality are the responsibility of the local governing board



How we compare to the nation: Preschoolers with IEPs



Sampling of placements for preschoolers with IEPs

Source: OSPI, 2019-20 school year

