

What is Evidenced Based Research?

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**MATERIALS ACCOMPANYING A PRESENTATION
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I. Introduction: IDEA requirement that IEP components now must be based upon “peer-reviewed research to the extent practicable.”

IDEA requires that the special education and related services and supplementary aids and services to be provided to a child under an IEP must be based on “peer-reviewed research to the extent practicable.” IDEA § 614 (d)(1)(A)(i)(IV). This provision raises a number of questions and potential problems. First, the new phrase is not defined anywhere in the law. The phrase “peer-reviewed research” may have one meaning in academic communities, but lawyers continue to argue over what it means in the context of special education. OSEP declined to define the phrase “peer-reviewed research” when enacting the federal regulations. 71 Fed. Register No. 156, at page 46664 (August 14, 2006). The phrase “to the extent practicable” is an odd choice for statutory language; it is rare for the Congress to impose a requirement, but qualify the requirement with a built in excuse

for noncompliance. OSEP also declined to define the phrase “to the extent practicable” although it noted that the phrase generally means that services and supports should be based upon peer-reviewed research to the extent that it is possible given the availability of peer-reviewed research. 71 Fed. Register No. 156, at page 46665 (August 14, 2006).

Second, despite the long-standing admonition by the courts that hearing officers and courts are not to substitute their notions of preferable educational methodology for those of school personnel, See Board of Educ., etc. v. Rowley 458 U.S. 175, 207-208 (1982), this new statutory language seems to be an invitation for hearing officers and courts to intrude into the arena of methodology.

OSEP stated that a district is not required to provide the methodology with the greatest body of peer-reviewed research in order to provide FAPE. 71 Fed. Register No. 156, at page 46665 (August 14, 2006). Also OSEP stated that there is no requirement that an IEP include specific instructional methodologies. 71 Fed. Register No. 156, at page 46665 (August 14, 2006).

OSEP also stated that the failure to provide services based upon peer-reviewed research would not automatically be construed to be a violation of IDEA. “The final decision about special education and related services, and supplementary aids and services that are to be provided to a child must be made by the child’s IEP Team based upon the child’s individual needs.” 71 Fed. Register No. 156, at page 46665 (August 14, 2006).

Third, it is not clear whether a failure to base special education and related services and supplementary aids and services to be provided to the child under an IEP would constitute a procedural violation or a substantive violation of the Act, if indeed it is a violation at all. If it is merely a procedural violation, there must be an additional showing (that the procedural violation impeded FAPE, impeded the parent’s right to participate or caused a deprivation of educational benefits) before there can be a hearing officer ruling against the school district. See, Section 615(f)(3)(E), If it were a substantive violation, no such additional showing would be required.

II. How Have Courts Interpreted “*peer-reviewed research to the extent practicable.*”

A. Two Illustrative Cases

1. Ridley Sch Dist v. MR & JR ex rel ER 680 F.3d 260, 58 IDELR 271 (3d Cir 3/19/12) **Facts:** The student was evaluated before kindergarten but found not eligible for special education. Shortly after THE STUDENT began kindergarten, she was identified as needing extra academic support, and was placed in extended-day kindergarten (“EDK”). She struggled in Kindergarten. On November 16, 2007, Parents requested a comprehensive reevaluation of THE STUDENT and Ridley issued a Permission to Evaluate on November 27, 2007, and the reevaluation was completed on February 26, 2008. The Reevaluation Report found that THE STUDENT had learning disabilities in the areas of reading decoding and comprehension, math computation, reasoning skills, and written language. THE STUDENT was also found to have fine motor delays and a language disability. As part of the Reevaluation Report, Ridley’s school psychologist prepared recommendations to be considered by the Individual Education Planning Team (“IEP Team”). Based on those recommendations, Ridley offered two alternative placements for THE STUDENT: (1) the learning support room at her current school, Grace Park, or (2) a self-contained classroom at a different elementary school. Parents observed both programs and determined that neither was appropriate for THE STUDENT

An IEP Team meeting was convened on March 28, 2008 to review a draft Individualized Education Program (“IEP”) that had been developed to address THE STUDENT’s educational needs. At Parents’ request, Ridley agreed to make revisions to the IEP and submit the revisions to Parents for approval. At the meeting, Ridley’s Special Education Director, suggested a program called *Project Read* as a possible reading aid for THE STUDENT SpEd Director told Parents that she would do some research on the program and follow up with Parents and the IEP Team in a few

days and also provided Parents with a printout from *Project Read's* website, and a review of the program conducted by the Florida Center for Reading Research.

On May 13, 2008, in accordance with the revised NOREP and addendums to the IEP, THE STUDENT began going to Grace Park's "resource room" every day for one hour of reading assistance in the morning and one hour of math assistance in the afternoon. The resource room reading curriculum consisted of the following instructional programs: *Read Naturally*, *Reading Workshop*, *Writing Workshop*, and *Patricia Cunningham's Systematic Phonics*. The resource room employed a program called *Everyday Math* for math instruction. There were five other students in the resource room, none of whom were first graders. The resource room teacher, explained that although the students were all provided with the same reading programs, different parts of the programs were used for different students, such that assistance was geared toward each student's individual needs. Teacher also testified that everything done in the resource room was "multi-sensory," which meant that the lessons included visual, oral, and hands-on components. THE STUDENT's grades in the resource room improved dramatically in a short period of time, but Parents attributed the improvement to improper resource room assistance, and claimed that THE STUDENT was not displaying similar progress at home. By the time THE STUDENT's first grade year ended, she had received eighteen days of resource room assistance.

On June 9, 2008, the IEP Team met to update the IEP for the 2008-2009 academic year (second grade). The NOREP from the June IEP Team meeting recommended that THE STUDENT continue to receive one hour per day of math instruction and one hour per day of reading instruction in the resource room. The NOREP indicated that the reading instruction would include a direct reading program, as well as a direct phonemic-based program to address THE STUDENT's needs in decoding vocabulary, fluency, and comprehension skills. The NOREP provided that Ridley would train its learning support staff on *Project Read* during the summer, and that the program would be "up and running" before the end of September 2008. Ridley also

agreed to pay for a summer learning program at the Benchmark School, as well as summer math tutoring three times per week.

Parents researched *Project Read* and determined that it was not appropriate for a student with THE STUDENT's needs. On August 14, 2008, Parents informed Ridley that THE STUDENT would be enrolling at the Benchmark School for the 2008-2009 school year because it provided the "intensive multi-sensory approach to reading" that they determined THE STUDENT required.

On December 4, 2008, Parents filed a due process complaint. HO found among other things that the IEPs proposed for THE STUDENT's first and second grade years were inadequate and therefore denied THE STUDENT a "free appropriate public education" ("FAPE") because they "lacked appropriate specially designed instruction *in the form of a research based, peer reviewed reading program.*" The Hearing Officer awarded Parents compensatory education for the 2007-2008 year (first grade), reimbursement of tuition at the Benchmark School for the 2008-2009 year (second grade), and reimbursement of transportation expenses to and from the Benchmark School.

The **court reasoned** as follows: "Parents' next argument presents an issue of first impression in this circuit. The Hearing Officer found that THE STUDENT's IEP was inadequate, both for the end of the 2007-2008 school year (first grade), and all of the 2008-2009 school year (second grade) primarily because it "fail[ed] to provide a **scientifically research-based, peer reviewed** reading program, which [THE STUDENT] needed in order to make meaningful progress."

The Hearing Officer stated that although *Project Read*, the reading program chosen for THE STUDENT, "was designed to be research based," there were "flaws in the research supporting it." These statements were made in conclusory fashion, without elaboration, in a footnote of the Hearing Officer's 20-page opinion. They were not well-explained or well-supported.

The District Court reversed the Hearing Officer's decision that the IEP was inappropriate, reasoning that the lack of a **peer-reviewed** instructional program was not automatically fatal to an IEP, and even if it was, *Project Read* was research-

based and peer-reviewed. On appeal, we need not decide whether the lack of a peer-reviewed reading program alone may result in the denial of a FAPE because we agree with the District Court that *Project Read* was based on peer-reviewed research. We will, however, consider Parents' contentions that Ridley denied THE STUDENT a FAPE because the available research regarding *Project Read* was flawed and did not adequately demonstrate that *Project Read* would be effective for a student with THE STUDENT's learning disabilities. As we explain below, Parents' arguments are unavailing; the peer-reviewed specially designed reading instruction in THE STUDENT's IEP was "reasonably calculated to enable [her] to receive meaningful educational benefits in light of [her] intellectual potential." *Chambers*, 587 F.3d at 182 (citation omitted). Ridley was not required to choose the reading program based on the optimal level of peer-reviewed research, or to implement the specific program requested by Parents.

RULING: We begin our analysis by reviewing the statutory provision at issue. In 2004, Congress added the following provision to the IDEA: "[t]he term 'individualized education program' or 'IEP' means a written statement for each child with a disability . . . that includes . . . a statement of the special education and related services and supplementary aids and services, *based on peer-reviewed research to the extent practicable*, to be provided to the child." 20 U.S.C. § 1414(d)(1)(A)(i)(IV) (emphasis added). This provision was incorporated into the revised IDEA regulations in 2006, which state that an IEP "must include . . . [a] statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child." 34 C.F.R. § 300.320(a)(4). Congress amended the IDEA in 1997 and 2004, in part, to respond to concerns that the statute "ha[d] been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities." 20 U.S.C. § 1400(c)(4). The IDEA's statement of congressional findings explains that "[a]lmost 30 years of research and experience has demonstrated that the education of children

with disabilities can be made more effective by” training teachers on “the use of scientifically based instructional practices, to the maximum extent possible,” and providing incentives for “scientifically based early reading programs.” *Id.* § 1400(c)(5)(E) and (F).

Unfortunately, neither the text of the IDEA nor the IDEA regulations provide much guidance as to the effect of § 1414(d)(1)(A)(i)(IV)’s peer-reviewed research provision in this case. Therefore, we will look to other instructive regulatory materials. *See Auer v. Robbins*, 519 U.S. 452, 462 (1997) (explaining that when interpreting a statute and its implementing regulations, we may look to the agency’s interpretation of its own regulations); *United States v. Occidental Chem. Corp.*, 200 F.3d 143, 151-52 (3d Cir. 1999) (stating that we must defer not only to interpretations supported by notice-and-comment rulemaking, but also “informal interpretations”); *Cleary v. Waldman*, 167 F.3d 801, 808 (3d Cir. 1999) (“[I]f an agency has been granted administrative authority by Congress for a statute, its interpretation—despite arising in an informal context—will be given deference as long as it is consistent with other agency pronouncements and furthers the purposes of the Act.”). In conjunction with its promulgation of the 2006 IDEA regulations, the U.S. Department of Education (“DOE”) issued an Analysis of Comments and Changes to the 2006 IDEA Regulations (“Analysis of IDEA Regulations”), 71 Fed. Reg. 46,540 (2006). In response to a comment requesting “clear guidance on the responsibilities of States, school districts, and school personnel to provide special education and related services . . . that are based on peer-reviewed research,” the DOE stated that “States, school districts, and school personnel must . . . select and use methods that research has shown to be effective, to the extent that methods based on peer-reviewed research are available.” 71 Fed. Reg. at 46,665. The agency made clear, however, that a student’s IEP team retains flexibility in devising an appropriate program. The Analysis of IDEA Regulations explained that the changes implemented by the 2004 IDEA amendments and the 2006 updated regulations “do[] not mean that the service with the greatest body of research is the service necessarily required for a child to receive FAPE. Likewise, there is nothing in the Act to

suggest that the failure of a public agency to provide services based on peer-reviewed research would automatically result in a denial of FAPE. The final decision about the special education and related services . . . that are to be provided to a child must be made by the child's IEP Team based on the child's individual needs." *Id.*

In response to a comment requesting that the DOE require programs provided to a disabled child to be research-based with demonstrated effectiveness in addressing the particular needs of a child, the Analysis of IDEA Regulations stated, "[w]hile the Act clearly places an emphasis on practices that are based on scientific research, there is nothing in the Act that requires all programs provided to children with disabilities to be research-based with demonstrated effectiveness in addressing the particular needs of a child where not practicable." *Id.* The DOE declined to adopt the recommended change because "ultimately, it is the child's IEP Team that determines the special education and related services that are needed by the child in order for the child to receive FAPE." *Id.* The DOE also rejected as "overly burdensome" a requirement that all IEP team meetings include a focused discussion of research-based methods and a proposed regulation that would force schools to provide written notice when an IEP team does not provide documentation of research-based methods. *Id.*

We can discern **two key principles** from these administrative materials and our prior decisions interpreting the IDEA. First, although schools should strive to base a student's specially designed instruction on peer-reviewed research to the maximum extent possible, the student's **IEP team** retains flexibility to devise an appropriate program, in light of the available research. *See D.S.*, 602 F.3d at 557; 71 Fed. Reg. at 46,665. Second, under the IDEA, courts must accord significant **deference** to the choices made by school officials as to what constitutes an appropriate program for each student. *See D.S.*, 602 F.3d at 556-57; *Ridgewood Bd. of Educ.*, 172 F.3d at 247; 71 Fed. Reg. at 46,664-65.

With these principles in mind, we will consider the two objections that Parents raise to the portion of THE STUDENT'S

IEP that addresses her reading and language disabilities. First, echoing the findings of the Hearing Officer, Parents argue that “there were flaws in the research [regarding the effectiveness of *Project Read*] which made it impossible to attribute the reading growth the students experienced [in the studies] to *Project Read* alone.” Second, they contend that none of the studies regarding *Project Read* demonstrated that the program was effective for students with THE STUDENT’s specific disabilities. Both arguments miss the mark. Given that the IDEA does not require an IEP to provide the “optimal level of services,” *D.S.*, 602 F.3d at 557 (citations omitted), we likewise hold that the IDEA does not require a school district to choose the program supported by the **optimal level of peer-reviewed research**. Rather, the **peer-reviewed** specially designed instruction in an IEP must be “reasonably calculated to enable the child to receive meaningful educational benefits in light of the student’s intellectual potential.” *Chambers*, 587 F.3d at 182 (citation omitted).

According to a 2007 review of *Project Read* published by the Florida Center for Reading Research (“FCRR”):

Project Read is a comprehensive language arts program designed to provide explicit instruction in a structured reading curriculum. The goal of the program is to help all students become thoughtful, purposeful, and independent readers. *Project Read* Curriculum may be implemented in the regular classroom, special education classes, and Title I classes. It may also be used as an intervention reading program for first through sixth graders or with adolescents and adults who struggle with reading or language learning. Whole or small group instruction is delivered by a classroom teacher, a special education teacher, or a reading teacher. Lessons are intended to occur daily within an extended block of time devoted to reading instruction. Emphasis is placed on systematic, direct instruction of concepts and skills supported and enhanced by a teaching approach that includes visual, kinesthetic, auditory and tactile strategies (VAKT), and the use of body language.’

After discussing several studies on the effectiveness of *Project Read*, and citing relevant articles, at least one of which was published in a peer-reviewed journal, the FCRR review

concluded that the research “[was] promising and the instructional strategies of *Project Read* [we]re aligned with current research. Future studies with sound experimental designs including control groups and random assignment may contribute more definitive information about the efficacy of *Project Read*.” The FCRR review then listed numerous strengths of the *Project Read* program, and found no weaknesses in *Project Read*’s curriculum.

We understand Parents’ concern that the available studies did not test *Project Read*’s effectiveness for students with THE STUDENT’s unique combination of disabilities. However, the research discussed in the FCRR review involved children of THE STUDENT’s age who struggled with reading, and indicated that *Project Read* was helpful in improving the reading skills of such students. Additionally, Teacher, Grace Park’s resource room teacher, and Woods, Ridley’s director of special education, both of whom have expertise in the field of special education, testified that *Project Read* was an appropriate program. SpEd Director explained that, “*Project Read* is a multi-sensory program that is based on Orton Gillingham’s principles that support learning disabled students. The research from Florida was very promising in terms of these students doing quite well.” SpEd Director further testified that “[t]he program . . . had a lot of components that learning disabled students learn by [including] what we called VAKT program, visual, auditory, kinesthetic, and touch. And most learning disabled students do very well when you bring all of the senses into the learning process.” Teacher also testified that *Project Read* was a **research-based** program and similar to other reading programs, such as *The Wilson Reading System*. Parents argue that, in contrast to *Project Read*, the program they requested, *The Wilson Reading System*, has been shown to be effective for teaching students with learning disabilities similar to those of THE STUDENT. However, Ridley did not have to choose the specific program requested by Parents. See *D.S.*, 602 F.3d at 557. Nor did it have to choose the program supported by the optimal level of peer-reviewed research. See *id.*; 71 Fed. Reg. at 46,665 (explaining that a school does not have to choose the program supported by the “greatest body of research”). “The IDEA

accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide h[er] with educational benefit.” *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1122 (9th Cir. 2011) (citations omitted); see *Rowley*, 458 U.S. at 207 (explaining that school districts have “[t]he primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child’s needs”). In selecting special education programs, a school district must be able to take into account not only the needs of the disabled student, but **also the financial and administrative resources that different programs will require**, and the needs of the school’s other non-disabled students. See *J.D. v. Pawlet Sch. Dist.*, 224 F.3d 60, 70 (2d Cir. 2000) (explaining that, in the context of the Rehabilitation Act, courts must be aware of the “need to strike a balance” between the rights of the disabled student and fiscal and administrative concerns); 71 Fed. Reg. at 46,665 (rejecting a proposed requirement on an IEP team as “overly burdensome”).

We will not set forth any **bright-line rule** as to what constitutes an adequately peer-reviewed special education program; hearing officers and reviewing courts must continue to assess the appropriateness of an IEP on a case-by-case basis, taking into account the available research. We recognize that there may be cases in which the specially designed instruction proposed by a school district is so at odds with current research that it constitutes a denial of a FAPE. See, e.g., *Waukee Cmty. Sch. Dist. v. D.L.*, No. 07-00278, 51 IDELR 15 (LRP) (S.D. Iowa Aug. 7, 2008) (explaining that a student was denied a FAPE, in part, because the school district frequently employed strategies which contradicted the relevant research and were even inconsistent with the school’s own assessment of the Additionally, if it is practicable for a school district to implement a program based upon peer-reviewed research, and the school fails to do so, that will weigh heavily against a finding that the school provided a FAPE. However, that is not the case here. Ridley relied on available peer-reviewed research in crafting the IEP for THE STUDENT, and proposed a program with specially designed

instruction that was “reasonably calculated” to enable her to achieve meaningful educational benefits in light of her intellectual potential and individual abilities. *See Rowley*, 458 U.S. at 207. Thus, we conclude that the District Court properly reversed the Hearing Officer’s finding that the IEP was inadequate to provide a FAPE.

2. Bd of Educ of the County of Marshall v. JA by Mark A & Fran A 56 IDELR 209 (NDWVa 3/30/11)

Facts: Born on January 19, 2004, THE STUDENT is a seven-year-old boy diagnosed with autism spectrum disorder. According to THE STUDENT's treating physician and psychologist, Dr. B, his condition manifests itself as repetitive and restrictive behaviors, learning impairments, and inattentiveness. THE STUDENT regularly receives treatment for autism at Nationwide Children's Hospital in Columbus, Ohio, and he has been enrolled at ALLC since the age of two. At ALLC, THE STUDENT receives thirty to forty hours per week of Applied Behavioral Analysis ("ABA") using Discrete Trial Instruction ("DTI").⁵ THE STUDENT lives with his parents in Marshall County, West Virginia and because of his disabilities, he is eligible to receive special education and related services under the IDEA from the LEA. Special education and related services are delivered to children like THE STUDENT through an IEP, which is developed by a multi-disciplinary team composed of representatives from the child's school, the LEA, the parents, and in some cases the child himself. 20 U.S.C. § 1414(d)(1)(B).

The LEA formed an IEP team to consider THE STUDENT's program and placement for the 2008-2009 school year. The IEP team observed THE STUDENT at ALLC, reported its findings regarding THE STUDENT's educational performance to THE STUDENT's parents, conducted a meeting, and determined that THE STUDENT should be placed exclusively in special education. The IEP also determined the location of the placement was to be Park View Elementary School in Moundsville, West Virginia. At the IEP meeting, neither the

parents nor their advocates objected to the IEP, except that THE STUDENT's parents questioned the SCERTS methodology to be used by the LEA.

THE STUDENT's parents preferred that THE STUDENT continue to receive ABA using DTI at ALLC as opposed to the SCERTS method that the LEA uses to educate students with autism in public schools. After receiving written notice from Principal indicating when the IEP would start and setting forth transition dates from ALLC to the public school system, THE STUDENT's parents rejected the IEP, again citing concerns about the SCERTS method. THE STUDENT's parents then entered into another non-cancelable contract with ALLC for the 2008-2009 school year. On November 13, 2008, THE STUDENT's parents filed a request for an impartial due process hearing.

COURT ANALYSIS: At the administrative hearing, several well-qualified experts testified on behalf of both parties with differing opinions about the SCERTS methodology specifically. The experts offered the "pros" and "cons" as to both the SCERTS method utilized by Park View Elementary School and the ABA method using DTI utilized by ALLC. For example, Mr. B described the flexibility of the SCERTS method, which allows for the use of other methodologies. (Hr'g Tr. 265, Feb. 17, 2009.) Mr. B also stated that there is no proof that any one program is more effective than any other. (Hr'g Tr. 292, Feb. 17, 2009.) Further, if THE STUDENT was not successful under the IEP, Mr. B suggested that the IEP team would reconvene to add new goals or objectives. (Hr'g Tr. 304, Feb. 17, 2009.) However, a professor in special education at West Liberty State College and Bethany College, testified that there is not enough peer-reviewed research to indicate that SCERTS is an effective teaching tool for autistic children. (Hr'g Tr. 28, Feb. 18, 2009.) Dr. B testified that he would prefer THE STUDENT continue in an ABA program because of THE STUDENT's need for ongoing skill acquisition. (Hr'g Tr. 94, Feb. 18, 2009.)

Although the defendants insist that the SCERTS program does not meet the federal standard as at teaching methodology based on **peer-reviewed research**, Dr. C testified

that the research supporting the ABA method is more limited than that supporting the SCERTS method. (Hr'g Tr. 231, Feb. 18, 2009.) Additionally, Dr. C testified that the SCERTS method is qualified as an evidence-based comprehensive model based on the National Research Council's recommendations. Even if the components of the SCERTS methodology were not peer-reviewed, the IDEA does not require the LEA to use **only peer-reviewed methodologies**. Thus, the hearing officer's determination that the SCERTS method had not been fully evaluated and his reliance on this as support for his determination that it is not effective is not justified. The IEP must include only a statement on "the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child." 20 U.S.C. § 1414(d)(1)(A)(IV) (emphasis omitted). This language does not prohibit the use of methodologies that are not **peer-reviewed**. See *Joshua A. v. Rocklin Unified Sch. Dist.*, No. CV 07-01057, 2008 WL 906243 (E.D. Cal. Mar. 31, 2008) ("It does not appear that Congress intended that the service with the greatest body of research be used in order to provide FAPE.").

B. Other Recent Decisions

1. Letter to Kane 55 IDELR 203 (OSEP 2/12/10) If peer reviewed research indicates that a particular service will only be effective at a certain frequency and intensity, the child's IFSP (& presumably his IEP) must reflect this information and apply it as appropriate to the particular child.

2. Souderton Area Sch Dist v. JH by JH & SH 52 IDELR 6 (E.D. Penna 2/12/9) Court rejected a challenge by parent to a particular methodology as not based upon peer-reviewed research to the extent practicable. Where Orton Gillingham method was a "best practice," it was sufficient. {See related case at: Jonathan H by John H & Susan H v. Souderton Area Sch Dist 562 F.3d 527, 52 IDELR 31 (3d Cir 4/14/9)}

3. NB UNPUBLISHED Joshua A by Jorge A v. Rocklin Unified Sch Dist 52 IDELR 64 (9th Cir. 3/19/9) Ninth Circuit in unpublished decision rejected parent challenge to LEA's methodology and claim that it was not based upon peer-reviewed research to the extent practicable.

4. HC & JC ex rel MC v. Katohan-Lewisboro Union Free Sch Dist 59 IDELR 108 (SDNY May 24, 2012). The court rejected a parent challenge alleging that IEP goals were not supported by peer-reviewed research.

5. Luo v. Baldwin Union Free Sch Dist 58 IDELR 158 (EDNY 3/5/12). Court rejected a parent's claim that an evaluation by the school district had to be based upon peer-reviewed research.

6. Long Beach Unified Sch Dist 49 IDELR 210 (SEA Calif 2/5/8) HO ruled that IEP components must be based upon peer-reviewed research but only to the extent practicable. Here some components of district's eclectic program were supported by peer reviewed research, and it provided FAPE.

7. Encinatas Sch Dist 108 LRP 9492 (SEA Calif 1/30/8) School district is permitted to choose among methodologies- whether peer reviewed or not- for evaluating a child's autism

8. Freemont Unified Sch Dist 49 IDELR 114 (SEA Calif 11/9/7). HO ruled that IEP components must be based upon peer-reviewed research but only to the extent practicable. Here some components of district's eclectic program were supported by peer reviewed research, and it provided FAPE.

III. NCLB and Scientifically Based Research

The No Child Left Behind Act, 20 U.S.C. § 6319, et seq, requires that instructional practices and programs be grounded upon scientifically based research. The statute mentions science or scientifically based research over 100 times.

NCLB defines scientifically based research as follows:

(37) Scientifically based research

The term “scientifically based research”—

(A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) includes research that—

(i) employs systematic, empirical methods that draw on observation or experiment;

(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

20 U.S.C § 7801(37)

IV. Other Select Definitions of Evidence Based Practice

A. One Scholarly Approach:

In the field of education, “evidence based” practice tends to refer to a program or method that has been found to have strong research support. In an article critical of this definition, three scholars suggest that the definition of “evidence based” practice has three components: (1) the best available evidence – evidence that is most relevant to the professional’s decision and has the highest degree of certainty. The research must have a very high methodological quality; (2) professional judgment – weighing the evidence and the values and context to select the appropriate practice; and (3) client values and context- recognition of the values of the community as well as the context in which the practice will be implemented. Spencer, Trina D., Detrich, Ronnie and Slocum, Timothy A.; “Evidence-based Practice: A Framework for Making Effective Decisions,” 35 *Education and Treatment of Children* 127 (No. 2, 2012).

B. University of North Carolina- Health Sciences Laboratory

“The most common definition of EBP is taken from Dr. David Sackett, a pioneer in evidence-based practice. EBP is "the conscientious, explicit and judicious use of current best evidence in making decisions about the care of the individual patient. It means integrating individual clinical expertise with the best available external clinical evidence from systematic research." (Sackett D, 1996)

EBP is the integration of clinical expertise, patient values, and the best research evidence into the decision making process for patient care. Clinical expertise refers to the clinician's cumulated experience, education and clinical skills. The patient brings to the encounter his or her own personal and unique concerns, expectations, and values. The best evidence is usually found in clinically relevant research that has been conducted using sound methodology. (Sackett D, 2002)” UNC- HSL: <http://www.hsl.unc.edu/services/tutorials/ebm/whatis.htm>

C. American Speech Language Hearing Association

Introduction to Evidence-Based Practice: What it is (and what it isn't)

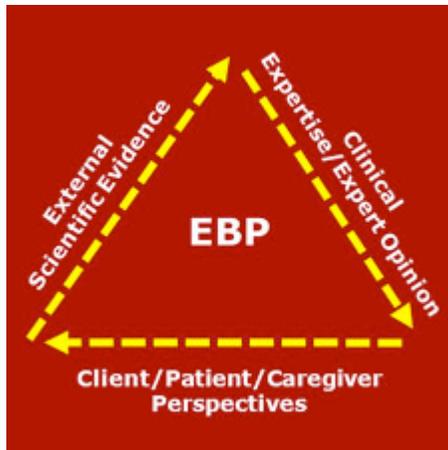
There is an abundance of definitions of evidence-based practice (EBP). Fortunately, most of them say essentially the same thing. The most well-known definition is that put forth by David Sackett and colleagues:

"Evidence-based medicine is the integration of best research evidence with clinical expertise and patient values." (Sackett D et al. Evidence-Based Medicine: How to Practice and Teach EBM, 2nd edition. Churchill Livingstone, Edinburgh, 2000, p.1)

In 2004, ASHA's Executive Board convened a coordinating committee on evidence-based practice. This committee, charged with assessing the issue of evidence-based practice relative to planning needs and development opportunities for ASHA, used a variation of this definition:

The goal of EBP is the integration of: (a) clinical expertise/expert opinion, (b) external scientific evidence, and (c) client/patient/caregiver values to provide high-quality services

reflecting the interests, values, needs, and choices of the individuals we serve. Conceptually, the trilateral principles forming the bases for EBP can be represented through a simple figure:



Because EBP is client/patient/family centered, a clinician's task is to interpret best current evidence from systematic research in relation to an individual client/patient, including that individual's preferences, environment, culture, and values regarding health and well-being. Ultimately, the goal of EBP is providing optimal clinical service to that client/patient on an individual basis. Because EBP is a continuing process, it is a dynamic integration of ever-evolving clinical expertise and external evidence in day-to-day practice.

<http://www.asha.org/members/ebp/intro/>

V. Resources for Applying Evidence Based Interventions in the Classroom

(NOTE: Please see the materials from Professor Mitchell Yell's presentation at this conference in the session titled "Evidence---Based Interventions for Children and Youth with Disabilities." Professor Yell has graciously given me permission to cite his materials.)

A. Appendix A: Where to Find Evidence Based Interventions: U. S. Institute of Education Studies
http://ies.ed.gov/ncee/pubs/evidence_based/appendix_a.asp

B. What Works Clearinghouse: U. S. Institute of Education Studies
<http://ies.ed.gov/ncee/wwc/>

C. Scientifically Based Research: U. S. Department of Education
<http://www2.ed.gov/nclb/methods/whatworks/research/index.html>

D. Integrating Research and practice: National Center on Learning Disabilities <http://www.nrld.org/index.html>

E. National Center on Response to Intervention:

<http://www.rti4success.org/subcategorycontents/research>

F. National Early Childhood Technical Assistance Center:

<http://www.nectac.org/topics/evbased/evbased.asp>

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