

Least Restrictive Environment (LRE) in the Context of Virtual Education

February 22, 2024

Michigan Department of Education Office of Special Education



Our Purpose, Our Why

34 CFR §300.1

(a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(b) To ensure that the rights of children with disabilities and their parents are protected;

(c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and

(d) To assess and ensure the effectiveness of efforts to educate children with disabilities.

Relevant Terms

- Free Appropriate Public Education (FAPE)
- Individualized Education Program (IEP)
- Individuals with Disabilities Education Act (IDEA)
- Intermediate School District (ISD)
- Least Restrictive Environment (LRE)
- Michigan Administrative Rules for Special Education (MARSE)
- Michigan Department of Education Office of Special Education (MDE OSE)
- Student with a Disability (SWD)

Objectives

- Understand a district must provide each student with a disability a FAPE in the LRE.
- Understand the regulations under the IDEA regarding LRE.
- Recognize district requirements for providing special education programs and services in the LRE for students eligible for special education.
- Understand how virtual education impacts LRE and FAPE.
- Understand virtual education cannot be used as an alternative to suspension without compromising a student's due process rights.

34 CFR §300.39: What is Special Education?

Special education IS specially designed instruction provided at no cost to the parent to:

- Meet the unique needs of a student with a disability
- Ensure access of the student to the general education curriculum

34 CFR §300.33 Public Agency

Public agency includes:

- State Education Agency (SEA)
- Local Education Agency (LEA)
- Education Service Agency (ESA)
- Public School Academies (PSA)
- Any other political subdivisions of the State that are responsible for providing education to children with disabilities

IDEA references each public agency in all aspects of the obligations pertaining to the requirements of IDEA.

Six Principles of IDEA

- Free Appropriate Public Education (FAPE)
- **Least Restrictive Environment (LRE)**
- Individualized Education Program (IEP)
- Appropriate Evaluation
- Parent & Student Participation
- Procedural Safeguards

The IDEA presumes LRE to be....

GENERAL EDUCATION

LRE Trends Across Academic Years

Indicator B-5: Educational Environments:	2020-2021	2021-2022
Students with IEPs in Michigan	181,390	182,743
5A: Percent of students with IEPs inside general education 80% or more of the day	69.92% (126,832)	71.71% (131,047)
5B: Percent of students with IEPs inside general education less than 40% of the day	9.93% (18,004)	10.02% (18,315)
5C: Percent of students with IEPs attending a separate school	4.98% (9026)	4.34% (7932)

What the IDEA and the Supreme Court Says:

- IDEA: SWDs are entitled to FAPE in the LRE based on their unique needs.
- Supreme Court: The IEP Team must develop an IEP that will allow the SWD to make progress that is appropriate in light of the student's circumstances.
 - There is no obligation to maximize a student's potential.
 - Endrew F. v. Douglas County Sch. Dist. (U.S. 2017)

LRE Requirements

- Several IDEA citations, together in combination, specify the requirements regarding LRE.
- Each citation is designed to ensure placement decisions are made by a group of people, including the parent, and based **SOLELY** on the needs of the child/student.
- 34 CFR §§ 300.114-300.117

Readers Digest Version: LRE Requirements

34 CFR §§ 300.114-300.117

- 300.114: a district must educate a SWD with their nondisabled peers to the maximum extent appropriate for the student. The setting can only be changed IF the use of supplementary aids and services in general ed is not successful due to the nature or severity of the disability.
- **300.115: a district must have a continuum of alternate placements available.**
- 300.116: a team of people knowledgeable of the SWD must determine placement annually, based on student needs, and as close as possible to the student's home.
- 300.117: LRE extends beyond the classroom into nonacademic and extracurricular time as well, including transportation.

LRE Requirements Package Resource

The OSE encourages districts and ISDs to utilize this document with general education and special education staff as a professional learning opportunity, as a resource to build awareness of LRE requirements, to ensure LRE decisions are made consistent with IDEA requirements, and to ensure each student with a disability receives a FAPE in the LRE.



Least Restrictive Environment: The Requirements Package

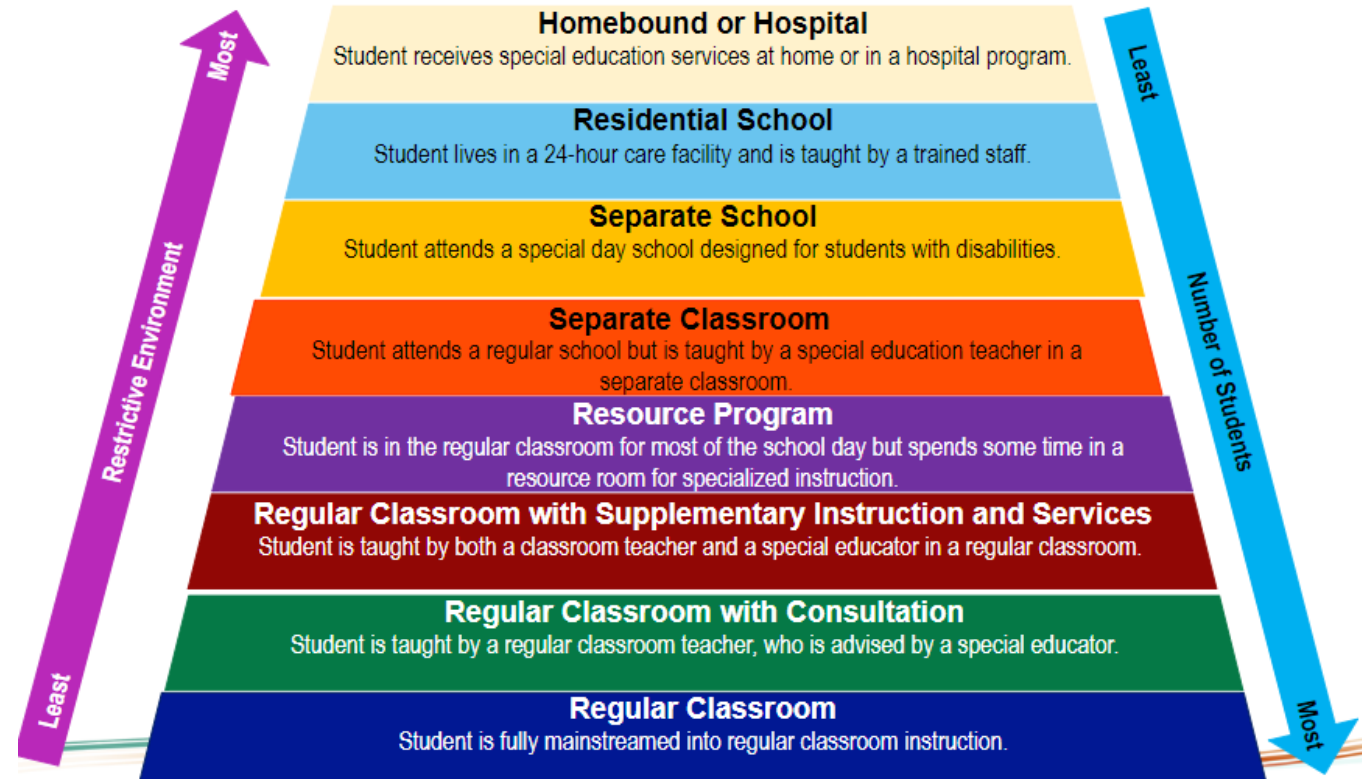
Michigan Department of Education
Office of Special Education
October 2023



34 CFR §300.115(a)

Continuum of alternative placements

(a) Each public agency must ensure that a continuum of alternative placements is **available** to meet the needs of children with disabilities for special education and related services

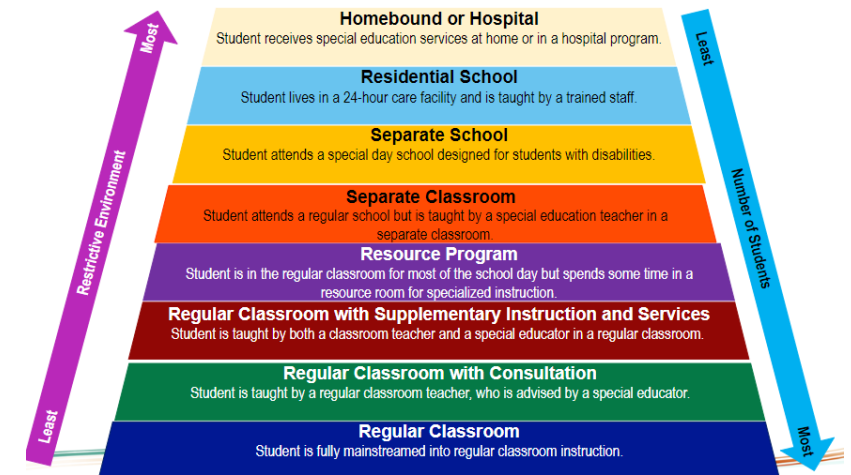


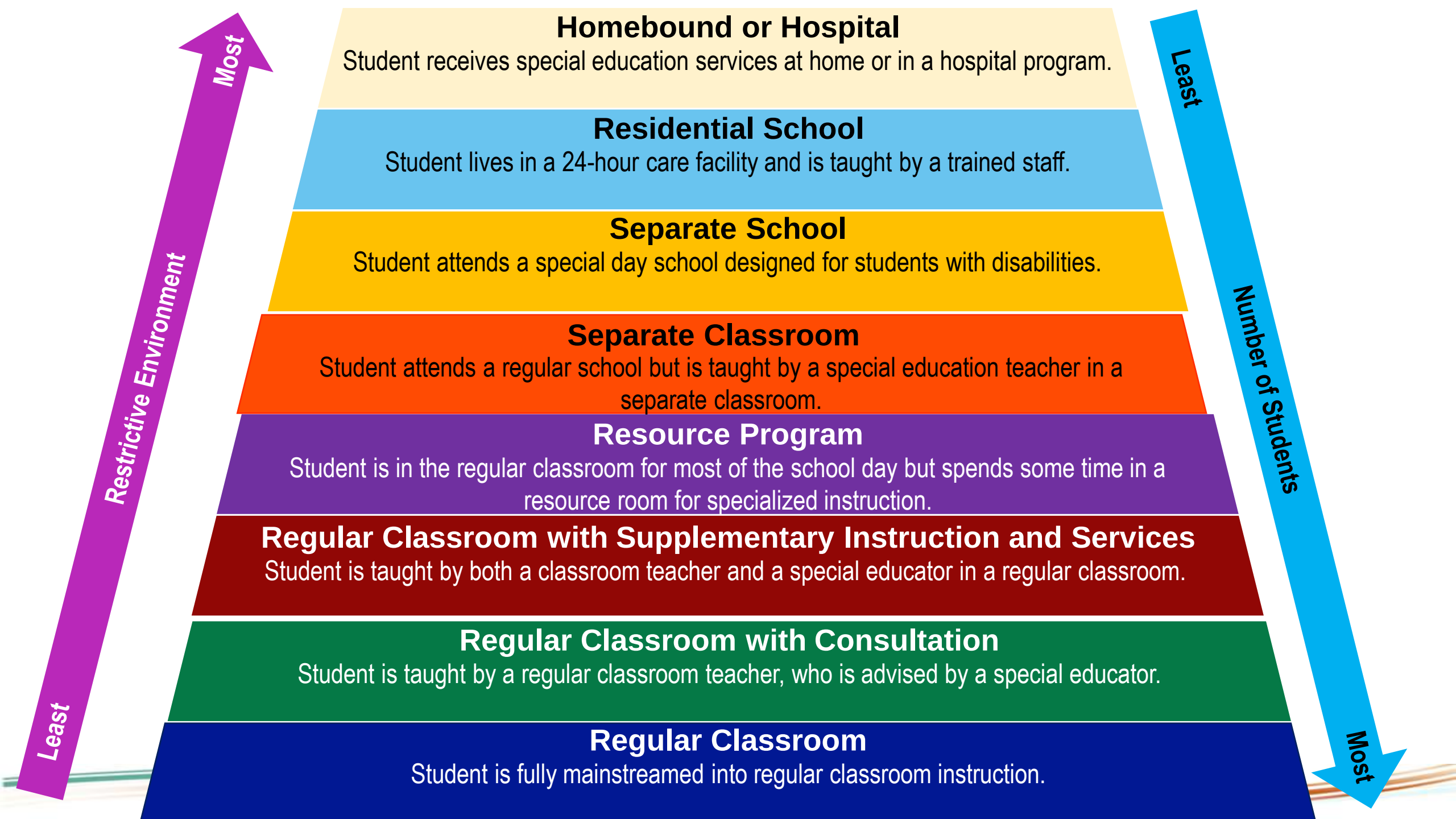
What placement options are available in your district?

34 CFR §300.115(b)

Continuum of alternative placements

- (b) The continuum required in paragraph (a) must -
- (1) Include the alternative placements listed in the definition of special education under §300.39 (**instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions**); and
 - (2) Make provision for **supplementary services** (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.





Homebound or Hospital

Student receives special education services at home or in a hospital program.

Residential School

Student lives in a 24-hour care facility and is taught by a trained staff.

Separate School

Student attends a special day school designed for students with disabilities.

Separate Classroom

Student attends a regular school but is taught by a special education teacher in a separate classroom.

Resource Program

Student is in the regular classroom for most of the school day but spends some time in a resource room for specialized instruction.

Regular Classroom with Supplementary Instruction and Services

Student is taught by both a classroom teacher and a special educator in a regular classroom.

Regular Classroom with Consultation

Student is taught by a regular classroom teacher, who is advised by a special educator.

Regular Classroom

Student is fully mainstreamed into regular classroom instruction.

Restrictive Environment

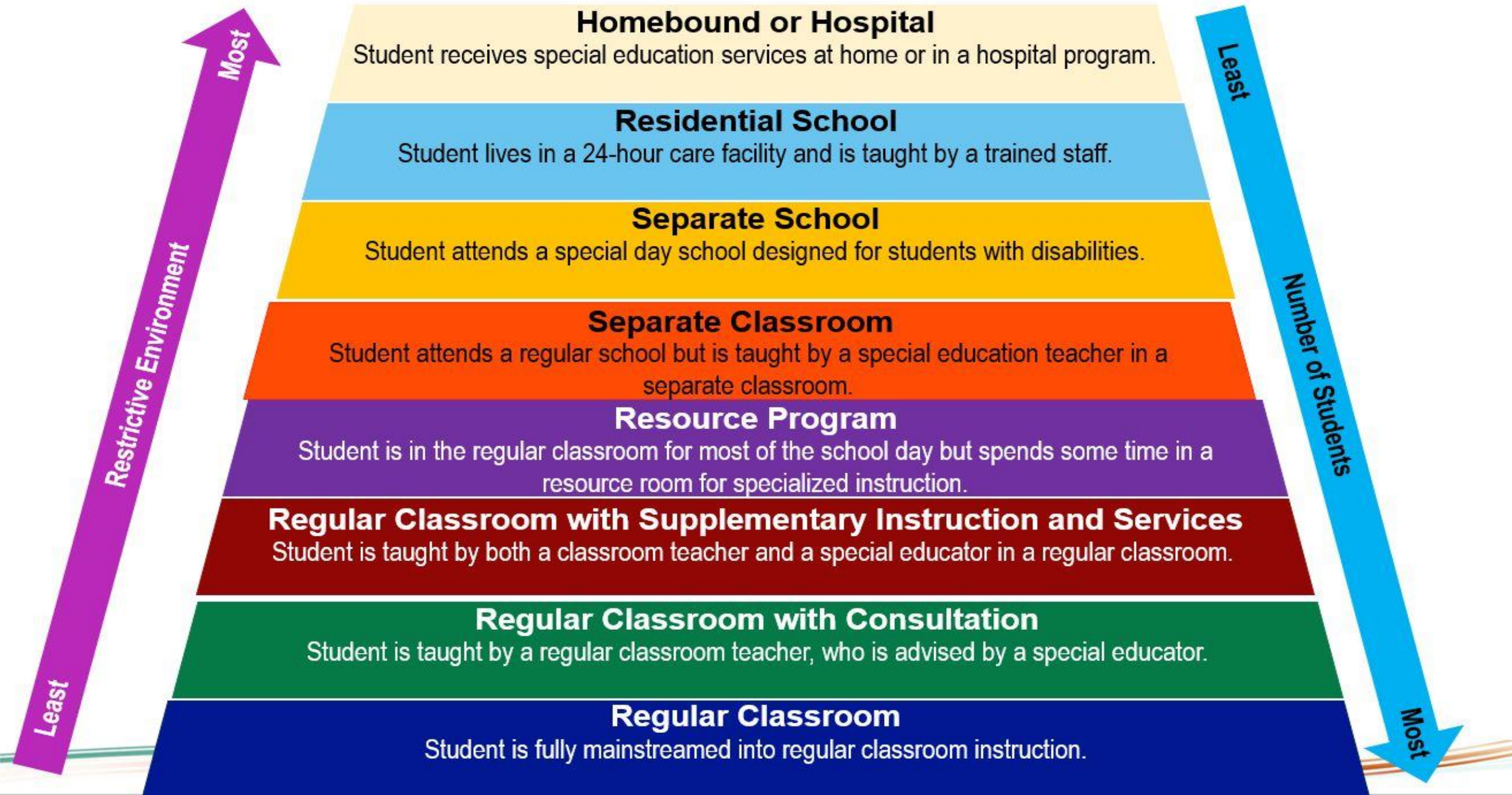
Least

Most

Least

Number of Students

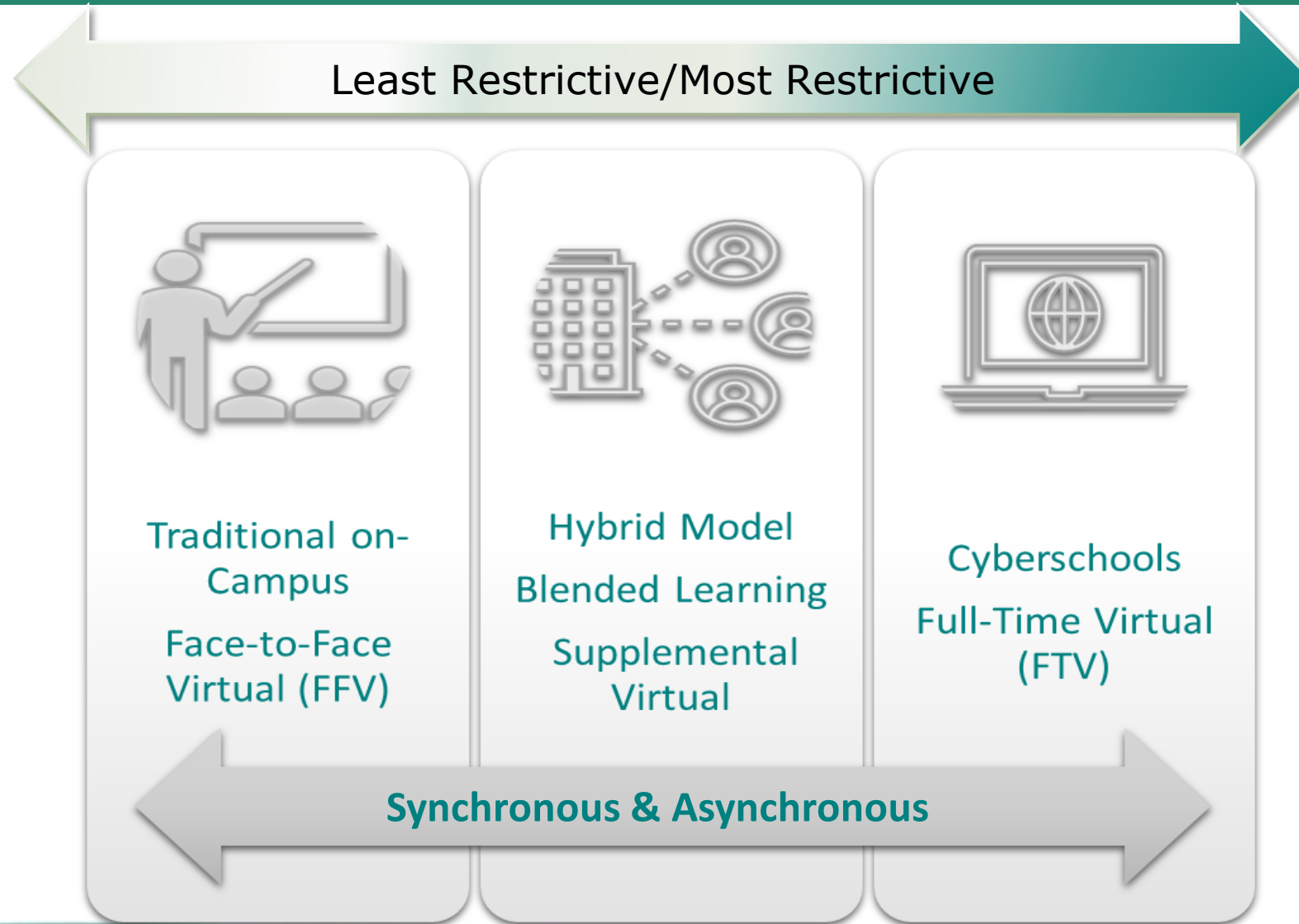
Most



Knowledge Check

1. Virtual Instruction is not mentioned in the IDEA requirements.
2. Neither the US Department of Education nor the State Education Agency (SEA) have the authority to waive IDEA requirements.
3. Virtual instruction can mean many different things depending on your state and can vary from school to school.
4. The same nondiscrimination principles that apply to traditional schools, also apply to virtual schools.
5. The educational rights and protections afforded to children with disabilities and their parents under IDEA must not be diminished or compromised when children with disabilities attend virtual schools.

Instructional Environment Continuum



Applied to Virtual Learning

- Online academies and virtual learning programs provide an alternative to school-based instruction.
- The IEP Team must determine whether a virtual program is appropriate and can meet a student's individual needs.

Caution: Virtual learning may not be appropriate for all students

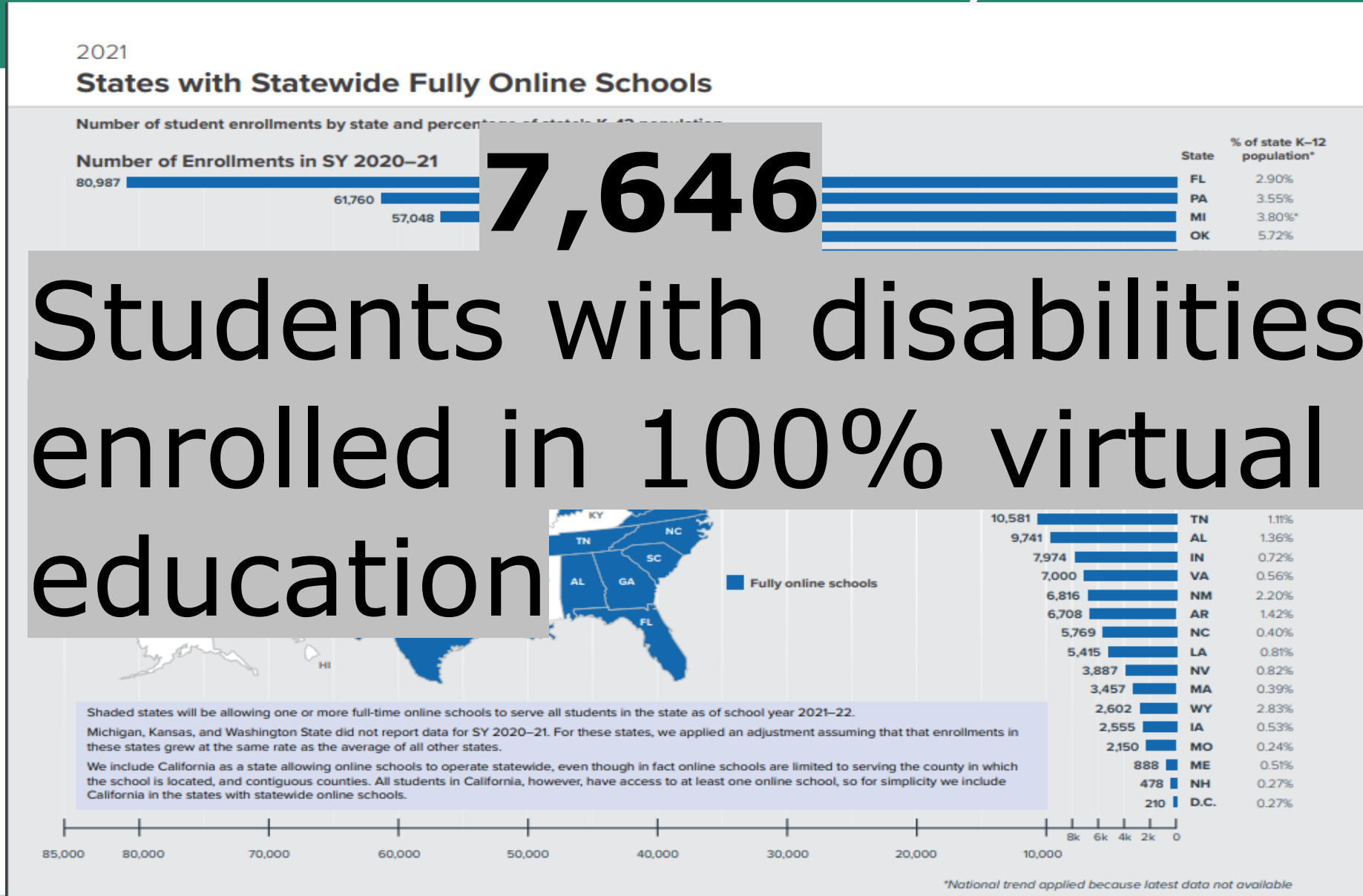
What Legislation Governs Virtual Special Education in Michigan?

- IDEA
- *Dear Colleague Letter*, 68 IDELR 108 (OSERS/OSEP 2016)

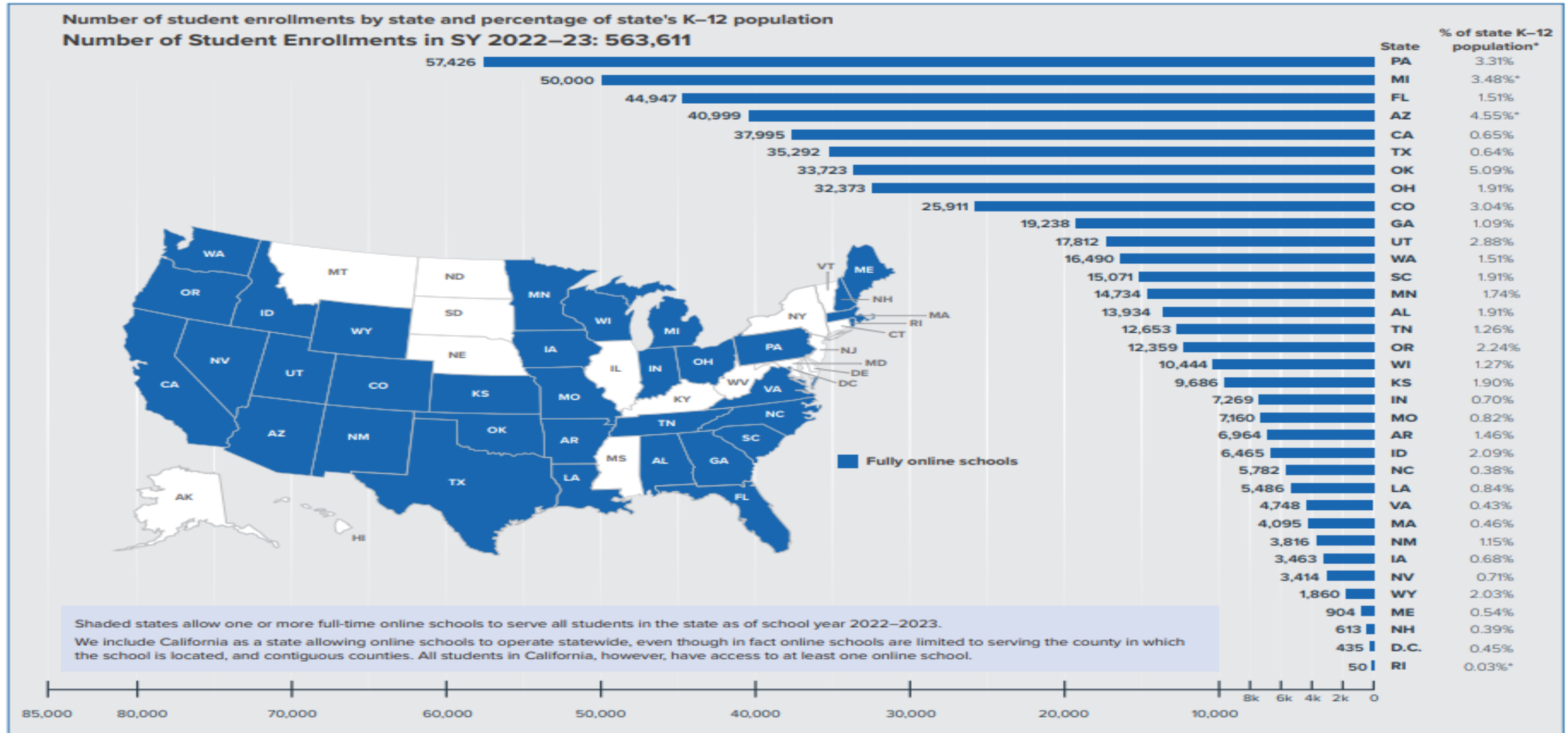
*"If a virtual school is a school of an LEA, **that LEA is generally responsible for ensuring that the requirements of IDEA are met** by that virtual school for children with disabilities participating in the virtual program"*

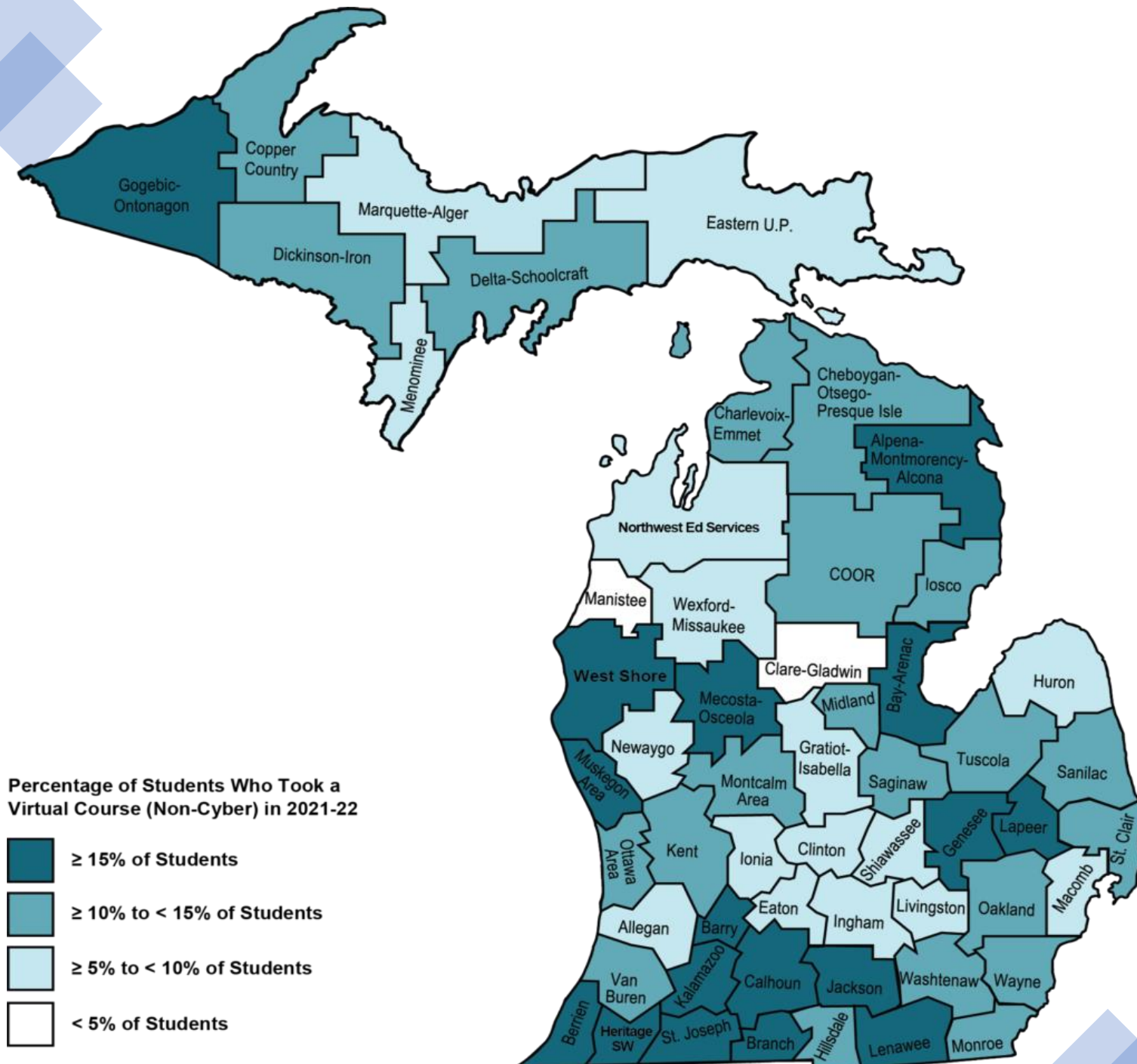
- MARSE
- Revised School Code

2021 States with Statewide Fully Virtual Schools



22-23 States with Fully Virtual Schools





Virtual Program Enrollment

- Does your virtual program have open enrollment beyond the district and an IEP Team will hold a meeting to develop an offer of FAPE based on:
 - virtual programming availability?
 - student needs?
- Is your virtual program limited to district enrollment?
- Who determines whether virtual is appropriate?
 - Can a parent ask for student to participate
 - Can an administrator move student to virtual?
- Other?

Virtual Service Delivery Model

LRE Considerations

- For SWDs who spend the majority of their day with their GE peers, do the staffing and/or rotation schedules for face-to-face instruction account for the support needed by the student in the virtual setting?
- When determining instructional groups, consider how to balance the amount of time students interact with their non-disabled peers in both the virtual and face-to-face settings so that they are not further restricted from accessing GE peers and content when they are in the virtual setting?

Source: *TIPs for Teaching and Learning and the LRE in Varied Service Delivery Models*

IEP Considerations for Virtual Instruction

Present Levels of Academic Achievement and Functional Performance (PLAAFP)	Virtual Considerations
Educational Impact: How the student's disability affects involvement and progress in the general education curriculum	• What opportunities exist for SWDs to access grade-level content and participate with their non-disabled peers? • How will SDI and focus on IEP goals be delivered with sufficient intensity to allow students to progress without significantly increasing their total time or workload? • For students who receive services primarily in self-contained settings, how is the time typically spent in GE maintained in the virtual environment?

IEP Considerations for PLAAFP

IEP Component	Virtual Considerations
Access to Education: How the student will participate and progress in the general education curriculum	• What opportunities are available for peer interaction? • What opportunities exist for all students to socialize and participate in extracurricular activities (i.e., virtual lunch bunches, virtual recess, virtual club meetings during what may have been a “study hall” in the physical building)?
MEDICAL: (Health, vision, hearing, or other medical issues)	• Will a copy of visuals need to be created or sent home? • What medical or health issues does the student have that need addressed in the virtual setting?

IEP Considerations for Goals

IEP Component	Virtual Considerations
Measurable Annual Goals & Progress	• How are a student's disability-related needs best supported through synchronous learning or asynchronous learning so the student can make progress on IEP goals and in age or grade-level curriculum and standards? • How does the virtual environment impact the reliability, validity, feasibility, and usefulness of data collected to measure student progress? • What barriers may exist in progress monitoring tools previously used in face-to-face settings that may prevent the student from accessing and demonstrating what they know and can do in a virtual learning environment?
MDE Office of Special Education	33

IEP Goals in the Virtual Setting

- Annual goals cannot be developed or revised based on where or how the student will learn.
- If the student is unable to work on goals based on their need, then the virtual option may not be appropriate without other supports.
 - Social work goals for peer interaction but student is learning asynchronously at home.
 - Math goal to independently complete multi-step equations but student is learning asynchronously at home.
 - Behavior goals for keeping hands to self and the student is learning synchronously while in a separate classroom.

IEP Considerations for Services

IEP Component	Virtual Considerations
Special Education Related Services, Supplemental Aids and Services	• How will Special Education and Related Services be provided? • How will providers document services that are and are not provided? • What is the best form of communication for Case Management? • Does the family have access to the internet, email, online learning platform or phone? • Does the family need parent counseling and training as a potential related service?

Harmful Effects and Virtual Instruction

- 34 CFR §300.116 very clearly states when determining LRE, the IEP Team must consider any potential harmful effect on the child or on the quality of services that he or she needs
- The nature of virtual instruction can be provided in a myriad of ways.
- Supporting virtual programming is not the responsibility of the parent. The burden of educational support cannot be placed on the parent.

Virtual as an Alternative to Suspension

- Virtual learning cannot be used as an alternative to suspension for students with disabilities.
- A district cannot unilaterally move a student with a disability to a virtual environment based solely on behavioral data.
- When examining a change to virtual instruction, closely examine the type of services and interaction with peers in the new setting.
 - The more significant the differences between the two settings, the more likely it is considered a change of educational placement.

Regulatory and Guidance Documents

- [Michigan Administrative Rules for Special Education \(MARSE\) With Related IDEA Federal Regulations \(PDF\)](#)
- [Individualized Education Program \(IEP\) \(michigan.gov\)](#)
 - [Individualized Education Program \(IEP\) Development: Special Education Programs and Services \(michigan.gov\)](#)
 - [Least Restrictive Environment \(LRE\): A Technical Assistance Case Study \(PDF\)](#)
 - [LRE Continuum \(PDF\)](#)
 - [LRE Scenarios \(PDF\)](#)
- [Family Matters](#)

Questions and Answers

Special Education Resources

- Michigan Alliance For Families
 - [Special Education Mediation Services](#)
 - Office of Special Education Information Line:
 - 888-320-8384 or
 - mde-ose@michigan.gov
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