

Educational Identification of Autism Spectrum Disorders: the Law and Eligibility in the Schools

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The Ziggurat Group
www.texasautism.com

Tri-State Autism Spectrum Disorder Webinar Series



This material was developed under a grant from the Colorado Department of Education. The content does not necessarily represent the policy of the U.S. Department of Education, and you should not assume endorsement by the Federal Government.

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Tri-State 2018-2019 Webinar Series

The Law and Eligibility: Overview

- Legal Foundations: Special Education & the Law
- Autism Spectrum Disorder Defined
- Tiers of Eligibility for Services - Educational Need
- Debacles – Breaking the Law
- Eligibility Vs. Diagnosis
- “High Cognition”- Gifted and the Law
- Girls with ASD and the Law
- Primacy and the Law



Legal Foundations

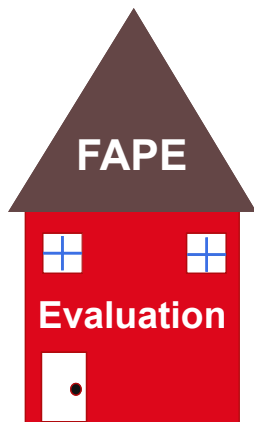
SPECIAL EDUCATION & THE LAW



Initial Evaluation §300.301

(a) General. Each public agency must conduct a full and individual initial **evaluation**, in accordance with §§300.305 and 300.306, **before** the initial provision of special education and related services to a child with a disability under this part.

Free Appropriate Public Education






Purpose of Special Education

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** need and **prepare** them for **further education, employment, and independent living**

(IDEA) §300.1 (emphasis added)



Child Find 3301-51-03

Each school district shall adopt and implement written policies and procedures...that ensure **all children with disabilities** residing within the district...**and who are in need of special education** and related services **are identified, located, and evaluated** as required by the Individuals with Disabilities Education Act...

Operating Standards for Ohio Educational Agencies Serving Children With Disabilities (2008)

Poll

What age group do you associate with Child Find?

a. Preschool

b. Elementary

c. Middle school

d. High School

e. All of the above



Child Find

“... all children with disabilities ...”

Applies from birth to age 21





Child with a Disability Means...

K.A.R. 91-40-1(k)(w)(kkk) (k) (1) A child evaluated as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, an orthopedic impairment, **autism**, traumatic brain injury, any other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities and who, by reason thereof, needs special education and related services; and (2) for children ages three through nine, a child who is experiencing developmental delays and, by reason thereof, needs special education and related services.

Department of Education Kansas Special Education Services Process Handbook Kansas State



Child with a Disability Means...

- | | |
|-----------------------------------|----------------------------------|
| ➤ mental retardation | autism |
| ➤ a hearing impairment | ➤ traumatic brain injury |
| ➤ a speech or language impairment | ➤ any other health impairment |
| ➤ a visual impairment | ➤ a specific learning disability |
| ➤ emotional disturbance | ➤ deaf-blindness, or |
| ➤ an orthopedic impairment | ➤ multiple disabilities |

and who, by reason thereof, needs special education and related services.

Department of Education Kansas Special Education Services Process Handbook Kansas State



All Areas of Suspected Disability

A child **must** be tested in **all** areas of **suspected** disability.

20 U.S.C. § 1414(b)

OSEP Letter to State Directors of Special Education (2011)

SUBJECT: A Response to Intervention (RTI) Process Cannot be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Act (IDEA)





United States Department of Education Office of Special Education Programs and Rehabilitation Services

January 21, 2011

States and LEAs have an **obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an RTI strategy.**



United States Department of Education Office of Special Education Programs and Rehabilitation Services

January 21, 2011

It is critical that this identification occur in a timely manner and that no procedures or practices result in delaying or denying this identification. **It has come to the attention of the Office of Special Education Programs (OSEP) that, in some instances, local educational agencies (LEAs) may be using Response to Intervention (RTI) strategies to delay or deny a timely initial evaluation for children suspected of having a disability.**

Autism Spectrum Disorder Defined

KANSAS, IDEA, AND DSM



IDEA Definition of Autism

“a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child’s educational performance. Other characteristics often associated with autism are engaging in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.”

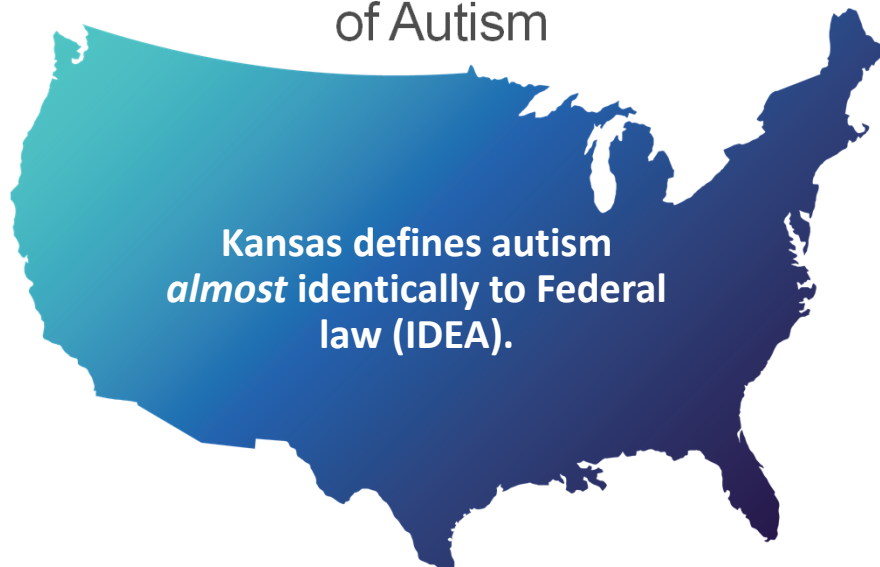


Kansas Definition of Autism

"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three **but not necessarily so**, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

Autism KAR 91-40-1 (f)

State versus Federal Definition of Autism





DSM-I DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS

DSM-II DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS

DSM-III DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS

DSM-IV DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS

DSM-5 DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS

1952 – Schizophrenic Reaction

1968 – Schizophrenia, childhood type

1980 – Infantile Autism

1994 – PDD; AU and Asperger’s

2013 – Autism Spectrum Disorder (ASD)



DESK REFERENCE
TO THE
DIAGNOSTIC CRITERIA
FROM
DSM-5

AMERICAN PSYCHIATRIC ASSOCIATION

**DSM-5
Autism Spectrum
Disorder**

DSM IV**3 symptom areas:**

1. qualitative impairment in social interaction
2. a qualitative impairment in communication
3. restricted and repetitive behavior.

DSM - 5**2 symptom areas:**

1. deficits in social communication
2. restricted, repetitive patterns of behavior

Deficits in social communication and social interaction (3/3)

1. Deficits in social-emotional reciprocity
2. Deficits in nonverbal communicative behaviors used for social interaction
3. Deficits in developing, maintaining, and understanding relationships



Restricted, repetitive patterns of behavior, interests, or activities (2/4)

1. Stereotyped or repetitive motor movements, use of objects, or speech
2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns or verbal nonverbal behavior
3. Highly restricted, fixated interests that are abnormal in intensity or focus
4. Hyper- or hyporeactivity to sensory input or unusual interests in sensory aspects of the environment



Improvements in DSM - 5

- Inclusion of hyper- and hypo-reactivity to **sensory** input or unusual interest in sensory aspects of the environment
- **Catatonia** as a specifier
- **Symptoms** must be present in the early developmental period (but **may not become fully manifest until social demands exceed limited capacities or may be masked by learned strategies later in life**).



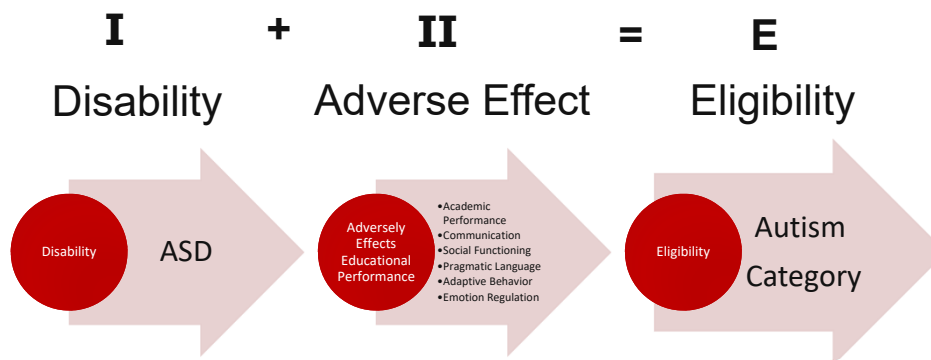


Kansas Definition of Autism

"Autism" means a developmental **disability** significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three but not necessarily so, **that ADVERSELY AFFECTS a child's educational performance.** Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

Autism KAR 91-40-1 (f)

Two Tiers to Eligibility



Specially Designed Instruction

Adverse Effect

Special Education Means Specially Designed Instruction

- 3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—
 - i. To address the **unique needs of the child that result from the child's disability**; and
 - ii. To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

34 CFR § 300.39



Adverse Effect on Educational Performance



- ▶ Academic performance
- ▶ Communication functioning
- ▶ Social functioning
- ▶ Pragmatic language
- ▶ Organizational skills
- ▶ Group work skills
- ▶ Problem solving skills
- ▶ Emotion regulation
- ▶ Hygiene
- ▶ Behavior
- ▶ Attention challenges
- ▶ Daily living skills/adaptive behavior

List of some areas of educational performance impacted by disabilities

Poll: How many of these Adverse Effects on Educational Performance may result from Autism?

- ▶ Academic performance
- ▶ Communication functioning
- ▶ Social functioning
- ▶ Pragmatic language
- ▶ Organizational skills
- ▶ Group work skills
- ▶ Problem solving skills
- ▶ Emotion regulation
- ▶ Hygiene
- ▶ Behavior
- ▶ Attention challenges
- ▶ Daily living skills/adaptive behavior

- A. None
- B. 2 to 4
- C. 5 to 8
- D. All of them



List of some areas of educational performance impacted by disabilities

Adverse Effect: Communication

Examples:

Has difficulty asking for help

Makes irrelevant comments

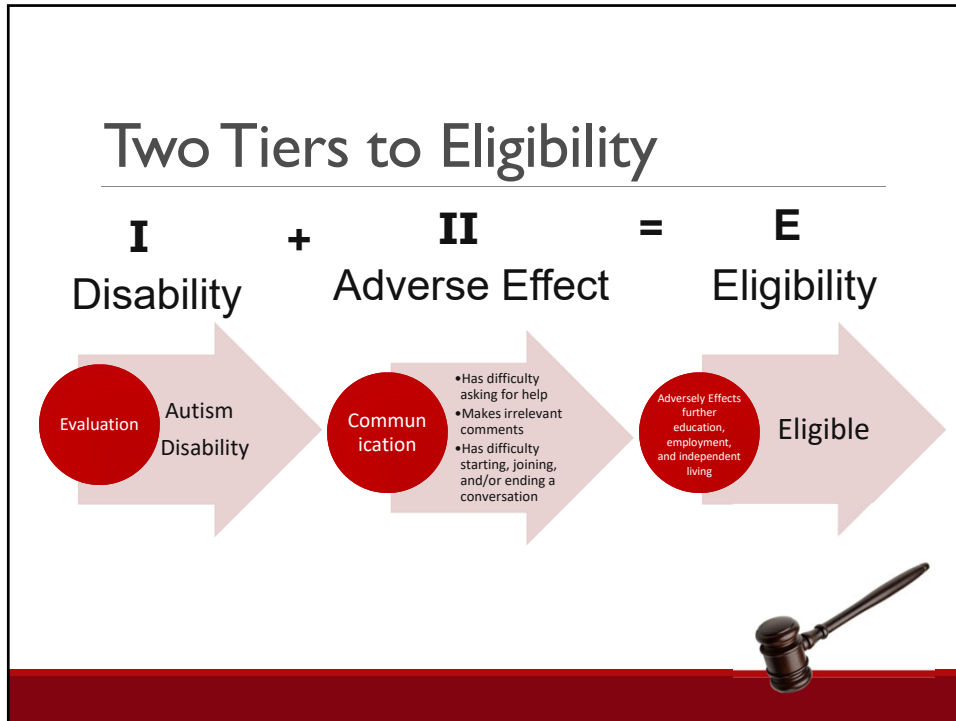
Has difficulty starting, joining, and/or ending
a conversation



Relationship?

Asking for help
Irrelevant comments
Conversation


Further Education
Employment
Independent Living

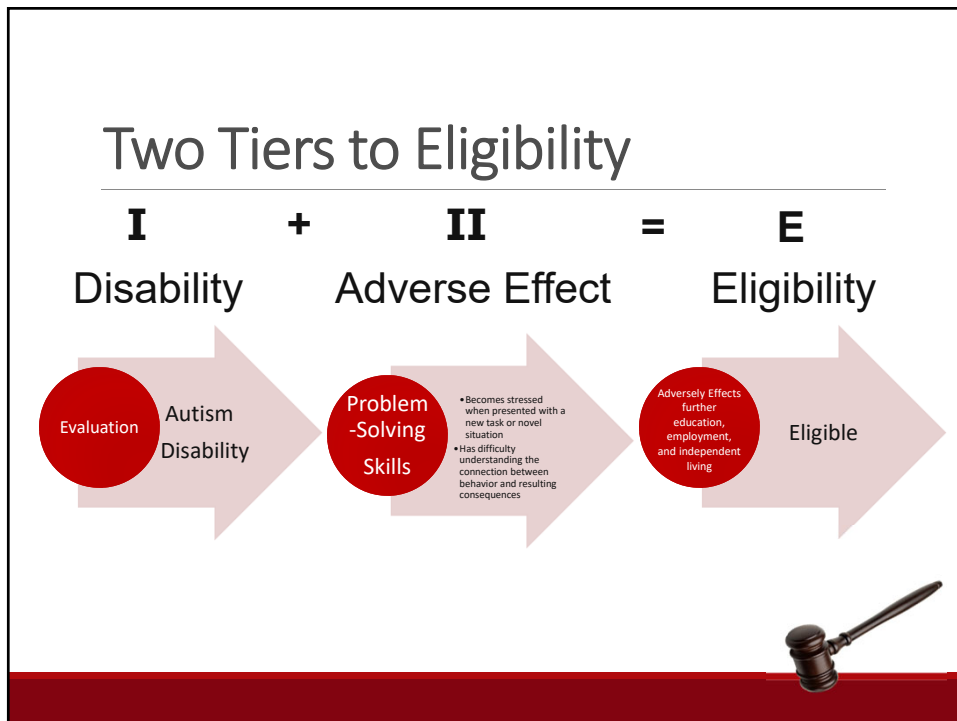
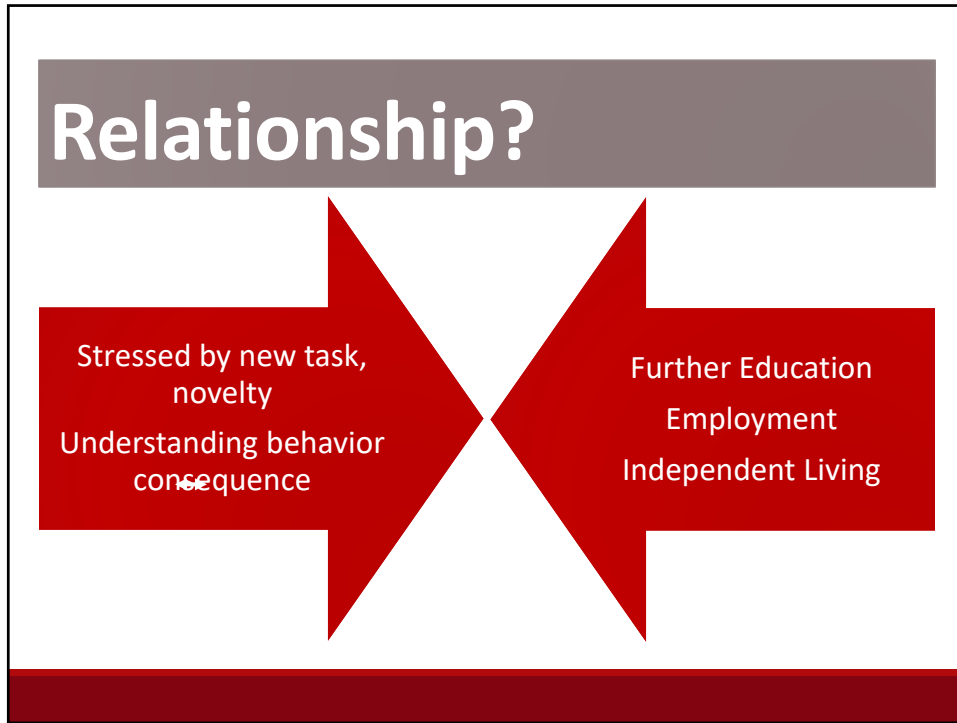


Adverse Effect: Problem-solving skills

Examples:

- Becomes stressed when presented with a new task or novel situation
- Has difficulty understanding the connection between behavior and resulting consequences





Adverse Effect: Hygiene skills

Examples:

Does not use utensils in the cafeteria

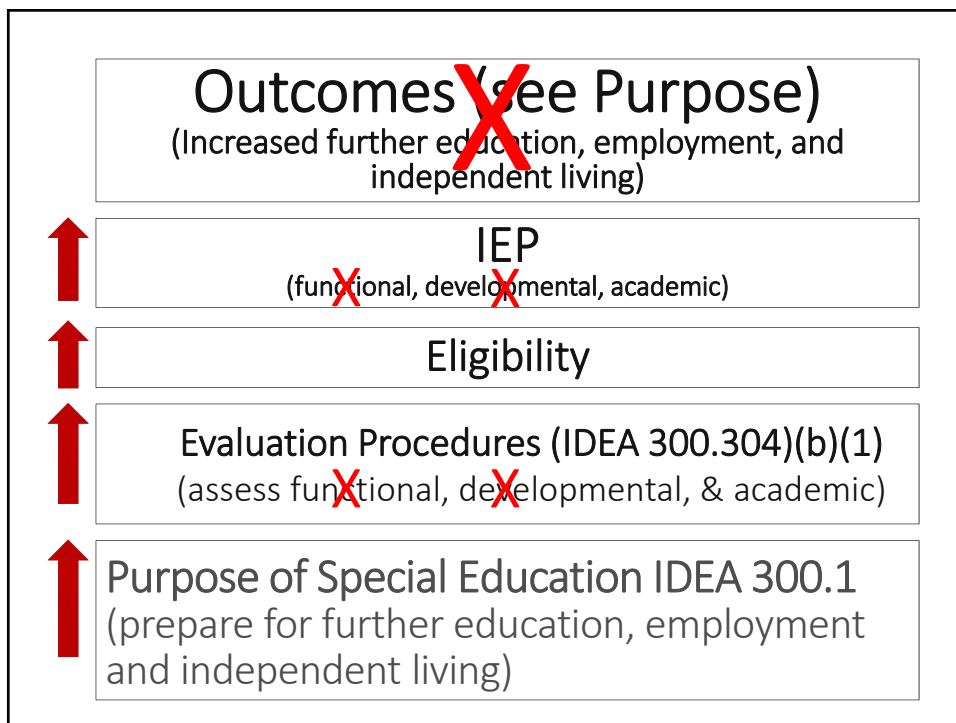
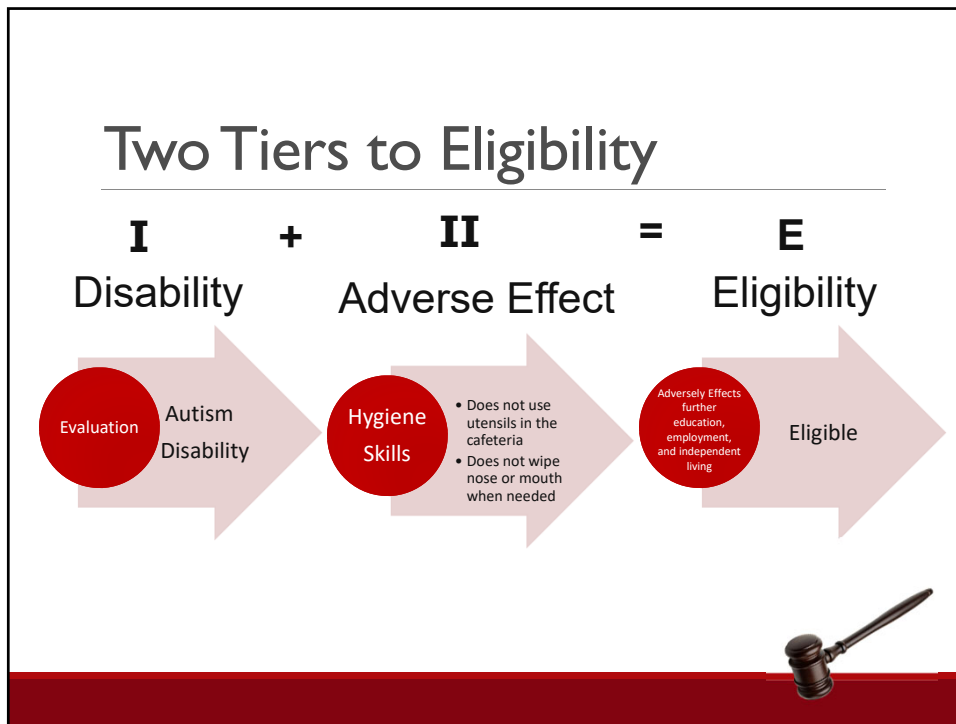
Does not wipe nose or mouth when needed



Relationship?

Does not use utensils
Does not wipe
mouth/nose

Further Education
Employment
Independent Living





Debacle

noun: A great disaster or complete failure

Merriam-Webster

Debacle
Number One
Hold Off

How Does Your District Identify...?

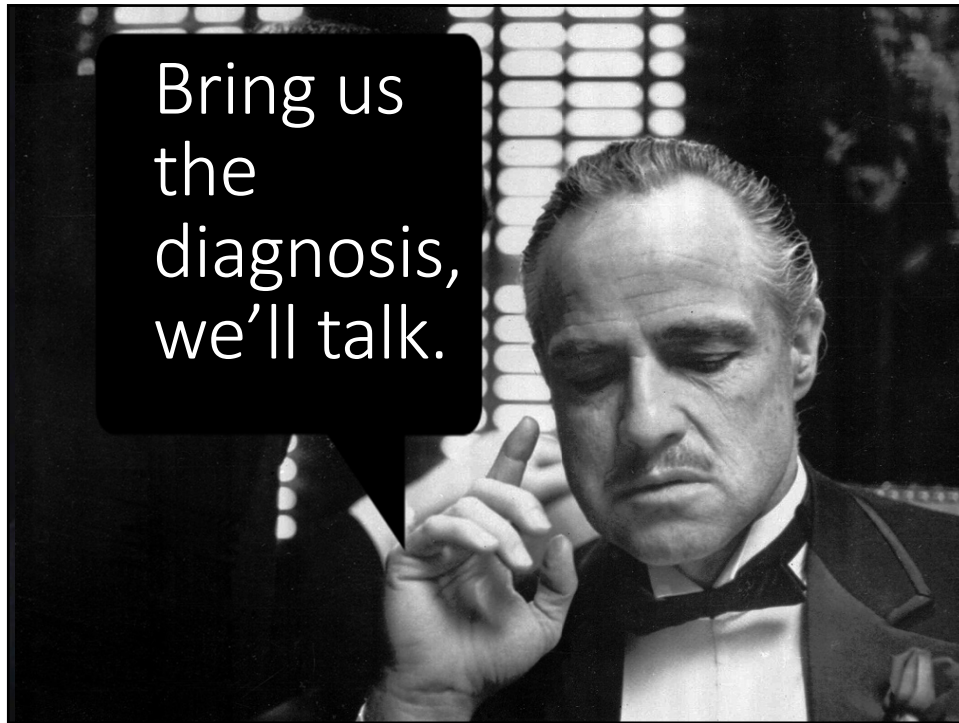


- Learning Disabilities
- Speech Impairment
- Emotional Disturbance

- Autism Spectrum Disorder



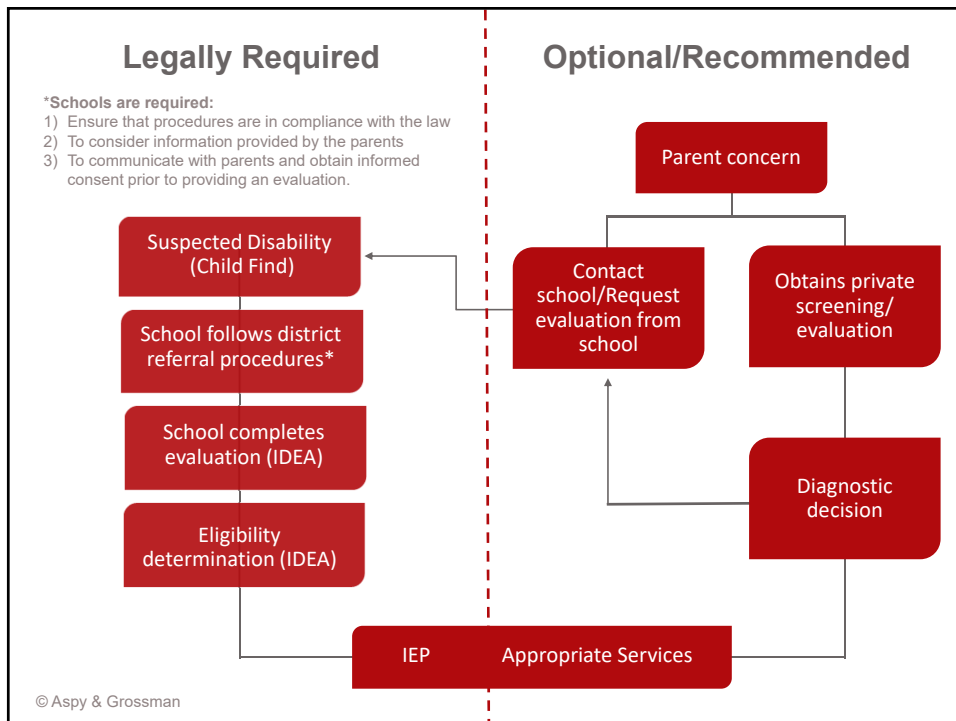
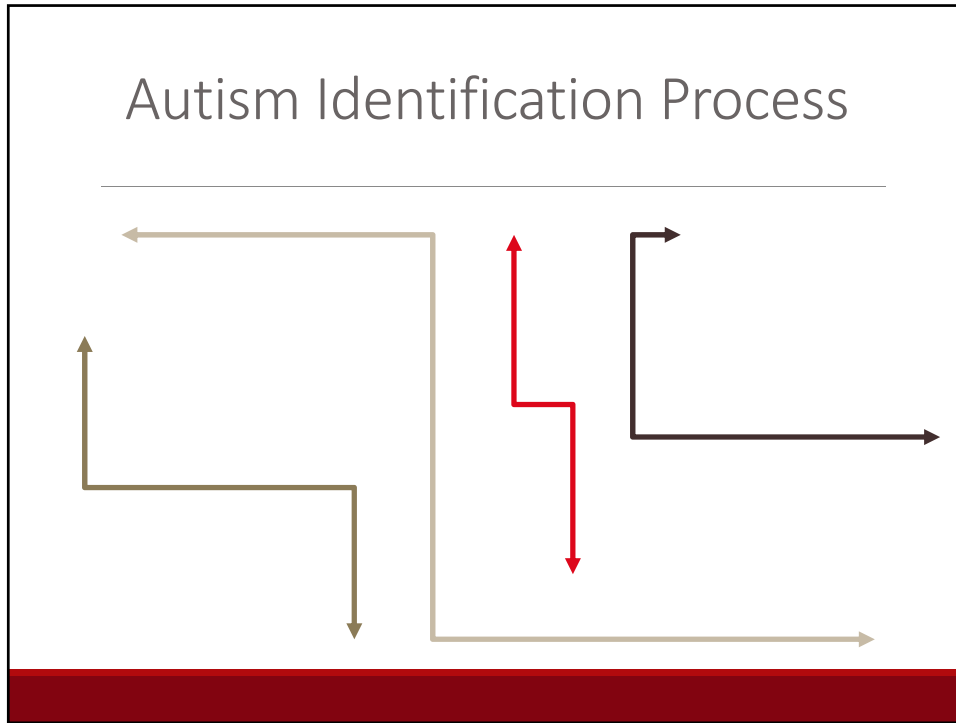
There is a widespread **egregious** practice in the United States—inaction of the public schools until receipt of an outside “medical” diagnosis of ASD, or even worse, the response to an evaluation request with a counter request for a private diagnosis. This is illegal and may deny a student FAPE.



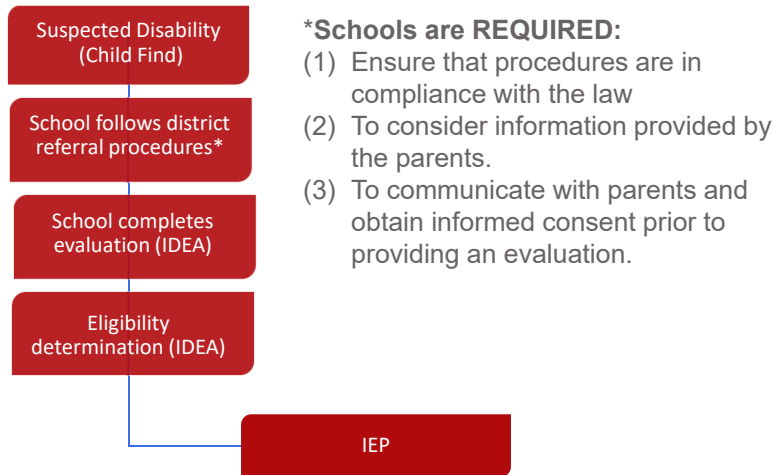
remember

Child Find – 20 USC §1412

All children with disabilities residing in the State, including children with disabilities ... regardless of the severity of their disabilities, and who are in need of special education and related services, are **identified, located, and evaluated** and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.



Autism Identification Process

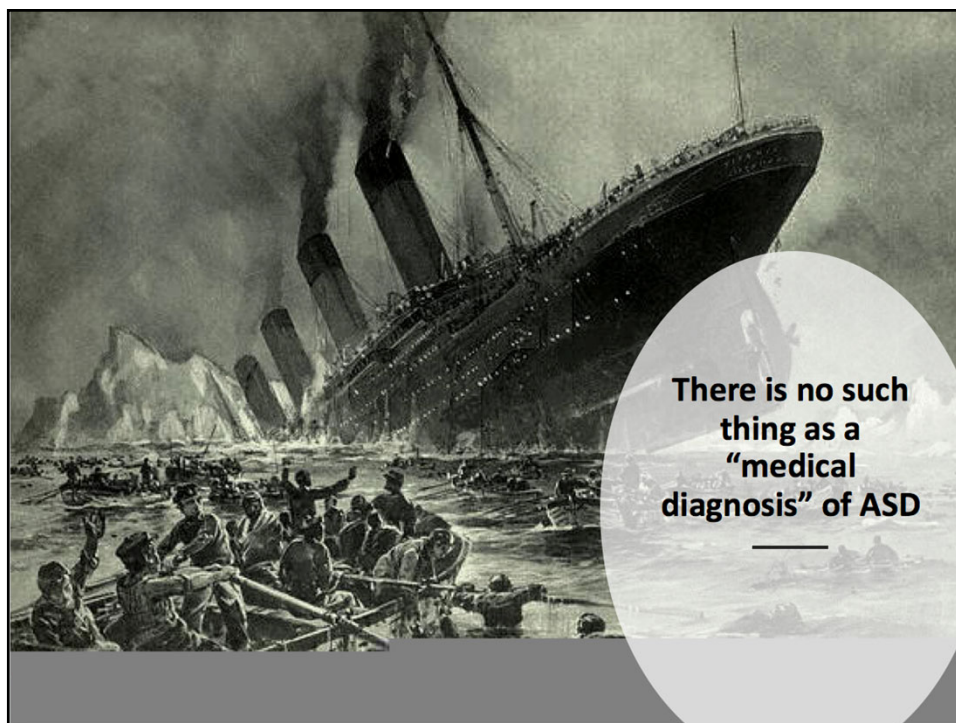


© Aspy & Grossman

Apples?

Debacle
Number Two

“false dichotomy”



Myth of “Medical Diagnosis”

Diagnosing autism spectrum disorder (ASD) can be difficult, since there is no medical test, like a blood test, to diagnose the disorders. [Professionals] look at the child’s behavior and development to make a diagnosis.



[Centers for Disease Control and Prevention. CDC](#) April 26, 2018

Myth of “Medical Diagnosis”

“There are no medical tests for diagnosing autism. An accurate diagnosis must be based on observation of the individual’s communication, behavior, and developmental levels”



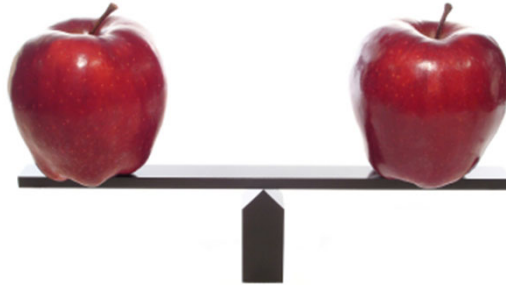
(Autism Society, n.d.)

Poll

Will you make an effort not to use the term “medical diagnosis” in reference to autism?

- A. yes 🖐️
- B. YES 🙌
- C. Si 👍
- D. I will ✓
- E. All of the above

| Diagnosis | Eligibility |
|---|---------------------------------------|
| Based on a set of criteria (e.g., DSM 5, ICD-10) | Based on federal law (IDEA) |
| A single condition with different levels of symptom severity in two core domains | Refers to a broad disability category |
| Used in private settings | Used only in public school system |
| May be determined by an individual or team | Must be determined by a team |
| Clinically significant impairment in functioning | Adverse effect |



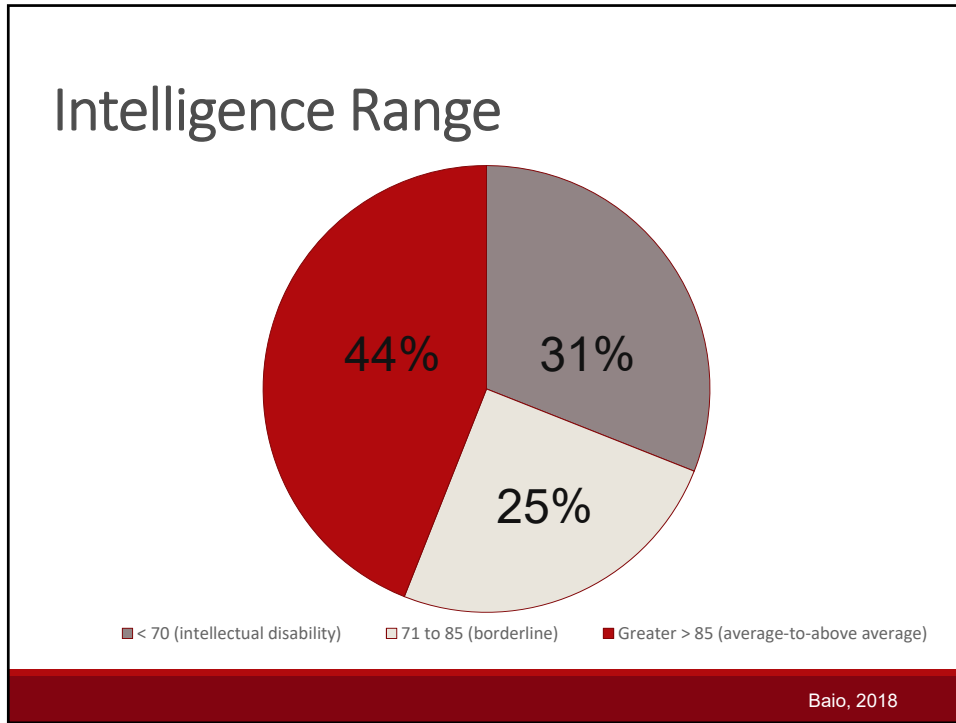
Autism is Autism

Whether it is a diagnosis or an eligibility

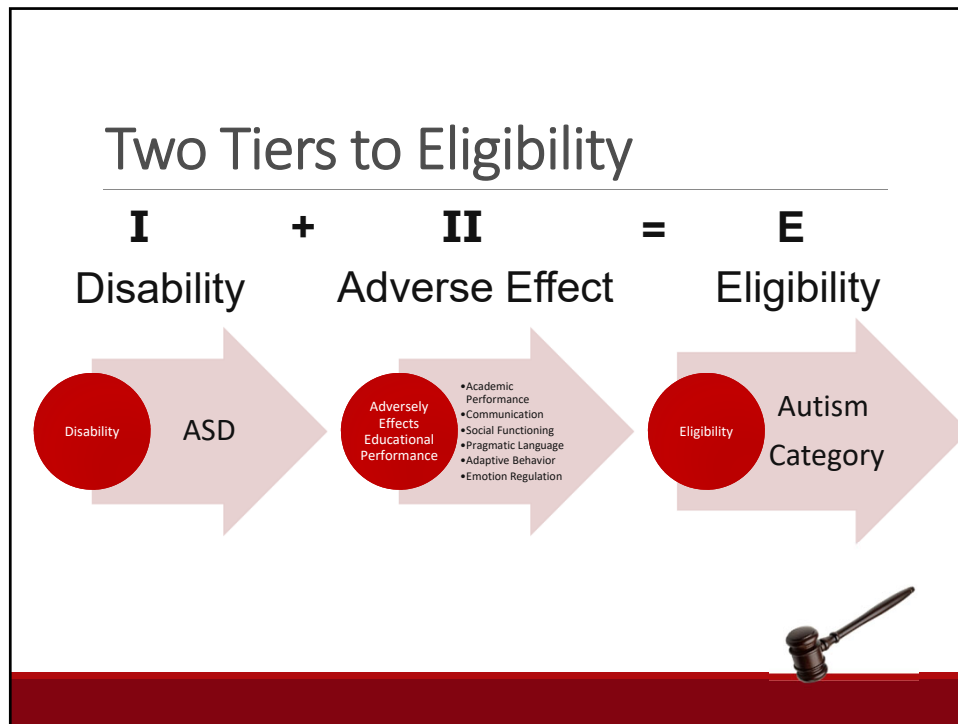
**DON'T BE
DECEIVED**

•





Under-identified
“High Cognition”,
Gifted and the Law



Eligibility and Educational Need

Unfortunately, school evaluation teams sometimes fail to consider educational factors **beyond traditional academics**. As a result, academically capable students with ASD who display deficits in **socialization and communication** that impact educational progress often are not served.

“Adversely Affects Educational Performance”

“Each state must ensure that FAPE is available to any individual child with a disability who needs special education and related services, **even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade**”

IDEA 300.101(c)(1)



United States Department of Education Office of Special Education Programs and Rehabilitation Services

December 20, 2013

It remains the Department’s position that students who have high cognition, have disabilities and require special education and related services are protected under the IDEA and its implementing regulations.



United States Department of Education Office of Special Education Programs and Rehabilitation Services

December 20, 2013

The Department, in responding to public comments, recognized that there will be some students who are gifted but also need special education and related services.

Sincerely,

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs



Independent Living: 20%

NLTS2, 2016

Full-time Employment - ASD



<https://www.forbes.com/sites/karenhigginbottom/2018/05/31/the-benefits-of-employing-people-with-autism/#2736ecc0772c>

Unemployment

Unemployment Rate of
College Grads with Autism



National
Unemployment Rate



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SOCIAL EXCLUSION

👤 54% not invited to activities with friends

👤 69% never saw friends

👤 65% never talked with friends on the phone



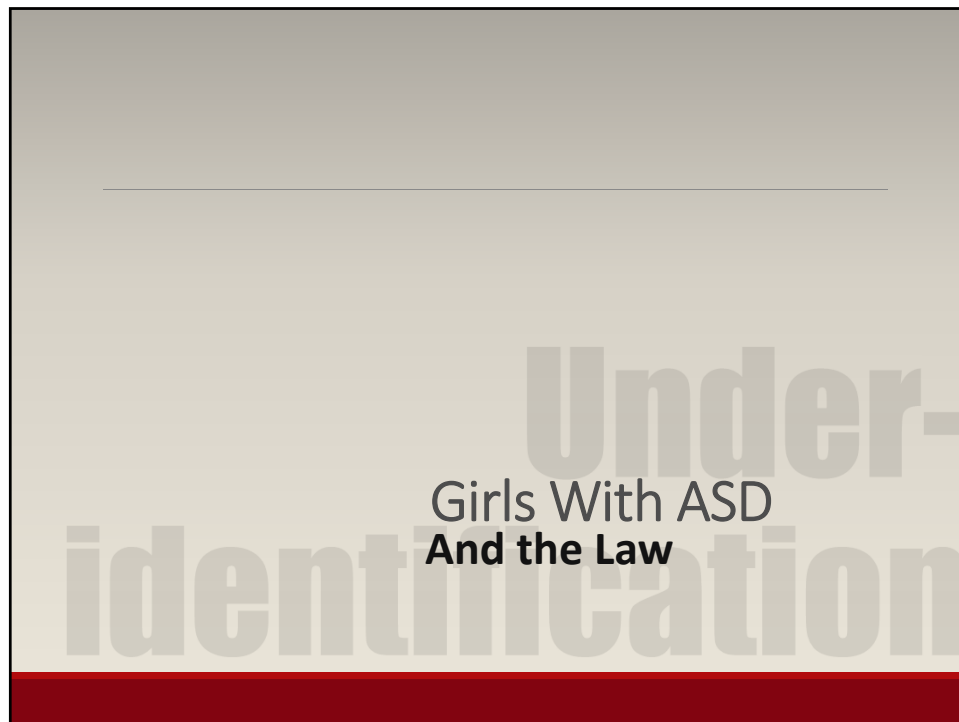
NLTS2, 2016



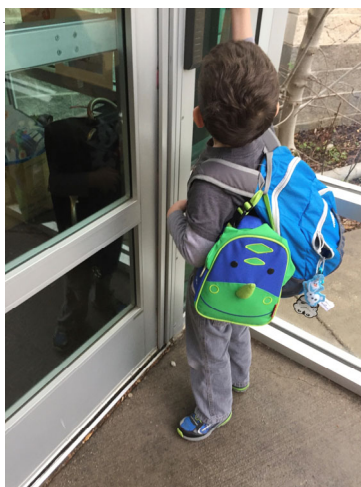
Purpose of Special Education

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** need and **prepare them for further education, employment, and independent living**

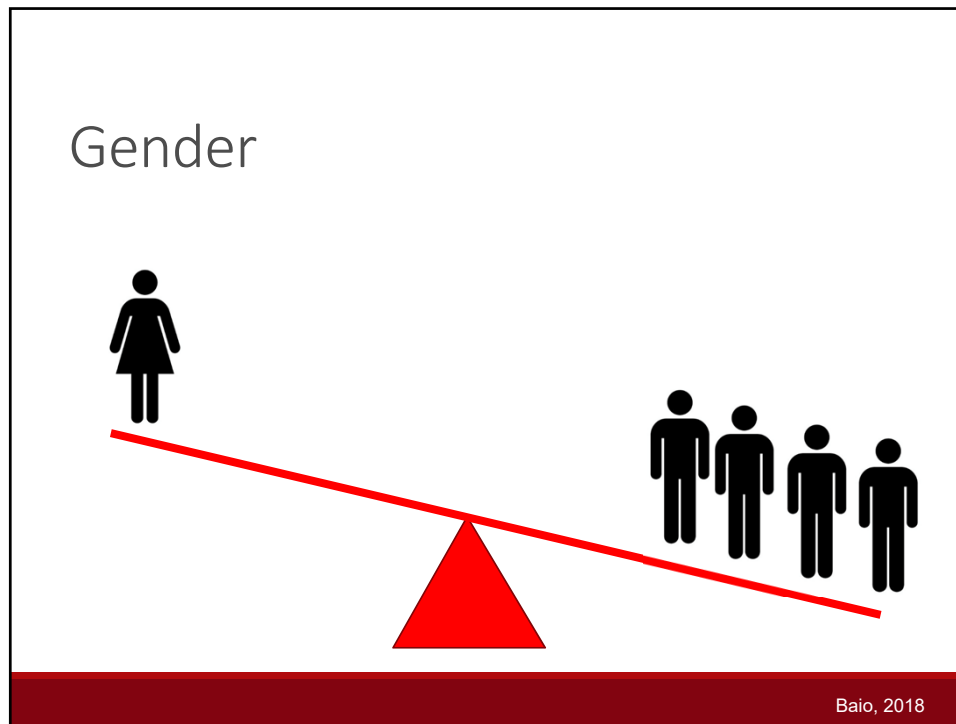
(IDEA) §300.1 (emphasis added)



Gender Gap



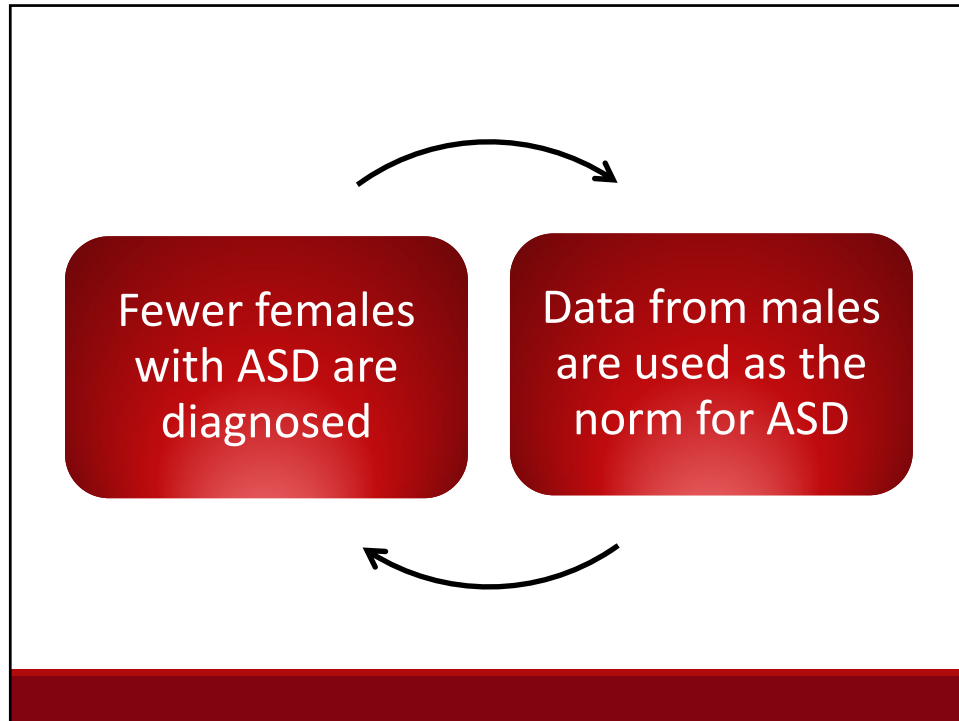
For higher functioning forms of autism, the dramatic increase in identification in recent years **applies only to boys**. Girls are **not** being identified at a higher rate (Attwood 2006, Wagner 2006).



Gender Gap

One in 42 boys in the U.S. has been diagnosed with autism, compared to just **1 in 189 girls**. But a growing body of research hints that the significant sex-based differences in autism diagnoses are a result not just of biological differences, but of a **failure to recognize ASD in girls**.

Pearson, C. (2013, November 26). How Girls With Autism Are Being Shortchanged. Retrieved October 16, 2014, from http://www.huffingtonpost.com/2013/11/26/girls-with-autism_n_4311015.html



Level of Functioning and Identification

Two groups:

1. Severely impaired girls – readily diagnosed
2. High functioning girls – not diagnosed or late diagnosis. (Van Wijngaarden-Cremers et al. ,2014)

Average or above average IQ decreased the chance of an ASD diagnosis **more** in girls than boys. (Giarelli et al.,2010)

Van Wijngaarden-Cremers et al. (2014). Gender and age differences in the core triad of impairments in autism spectrum disorders: A systematic review and meta-analysis. *Journal of Autism and Developmental Disorders*, 44-627-635.

Gender Differences in Identification



“ . . . Girls are less likely to be identified with ASD even when their symptoms are equally severe” (Russell, Steer, & Golding, 2011, p. 1291).



Russell G, Steer C, Golding J. (2011). Social and demographic factors that influence the diagnosis of autistic spectrum disorders. *Social Psychiatry and Psychiatric Epidemiology*. 46,1283-1293.

Gender Differences in Identification

“This may suggest that girls with ASD are more easily missed in the diagnostic process, and may **require additional problems** to push them over the diagnostic threshold” (p.793).

ASD + X = ASD

Dworzynski, K., Ronald, A., Bolton, P., & Happe, F. (2012). How different are girls and boys above and below the diagnostic threshold for autism spectrum disorders? *Journal of the American Academy of Child and Adolescent Psychiatry*, 51(8), 788–797.



Age of Diagnosis

- On average, ASD diagnosis in females occurred **2 years after caregivers expressed concerns**.
- The average time between first symptoms and diagnosis was **longer for females** than for males.
- Girls with Asperger's are identified **later** than boys (average of 2 years)
- In **adults**, females with autistic disorder were diagnosed **later** than males

Begeer, Mandell, Wijnker-Holmes, Venderbosch, Rem, Stekelenburg, & Koot (2013). Sex differences in the timing of identification among children and adults with autism spectrum disorders. *Journal of Autism and Developmental Disorders*, 43,1151-1156.

“The consequences of a missed or late diagnosis include social isolation, peer rejection, lowered grades, and a greater risk for mental health and behavioral distress such as anxiety and depression during adolescence and adulthood.”

(Wilkinson, 2008, p.3)

Reasons for Underidentification of Females with ASD

Referral Bias

Girls with ASD show different and less severe communication and social challenges. Families and professionals often attribute girls' challenges to **shyness or anxiety**. This can lead to fewer referrals and misdiagnosis.

(Holtmann et al. 2007)



ASD Sex Differences

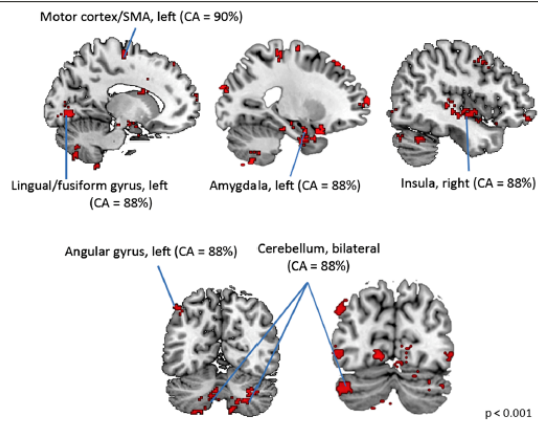


Fig. 2 Sex differences in brain morphometry in childhood autism. Girls and boys with ASD showed significant differences in brain structure. Notably, brain areas which showed sex differences in ASD fell into two general functional systems: the motor system and systems that form part of the "social brain." These brain areas include the left motor cortex, left SMA, left lingual/fusiform gyrus, left angular gyrus, right insula, bilateral cerebellum, and bilateral amygdala. They showed high classification accuracies (CA > 85 %) for distinguishing girls from boys with ASD. CA value given for a set of contiguous voxels corresponds to the highest classification accuracy among those voxels

Supekar & Menon (2015). Sex differences in structural organization of motor systems and their dissociable links with repetitive/restricted behaviors in children with autism. *Molecular Autism*, 6:50.

Gender Differences

Girls on the higher end of the spectrum also have

- fewer special interests
- better superficial social skills
- better language and communication skills and
- less hyperactivity and aggression

(Gillberg & Coleman, 2000)

Lower Levels of Restricted Interests

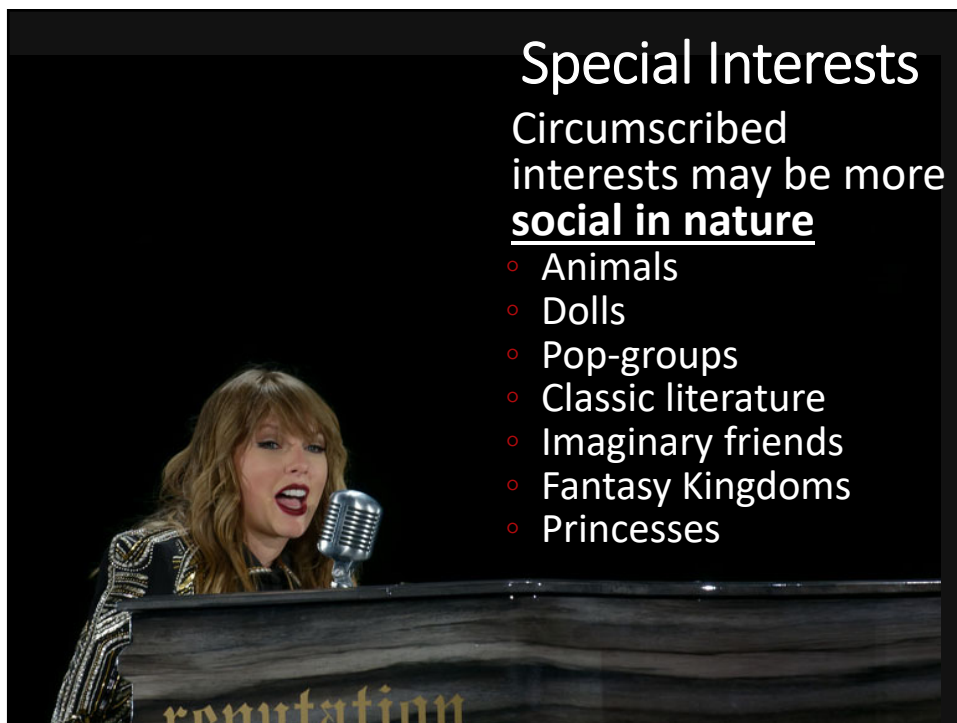
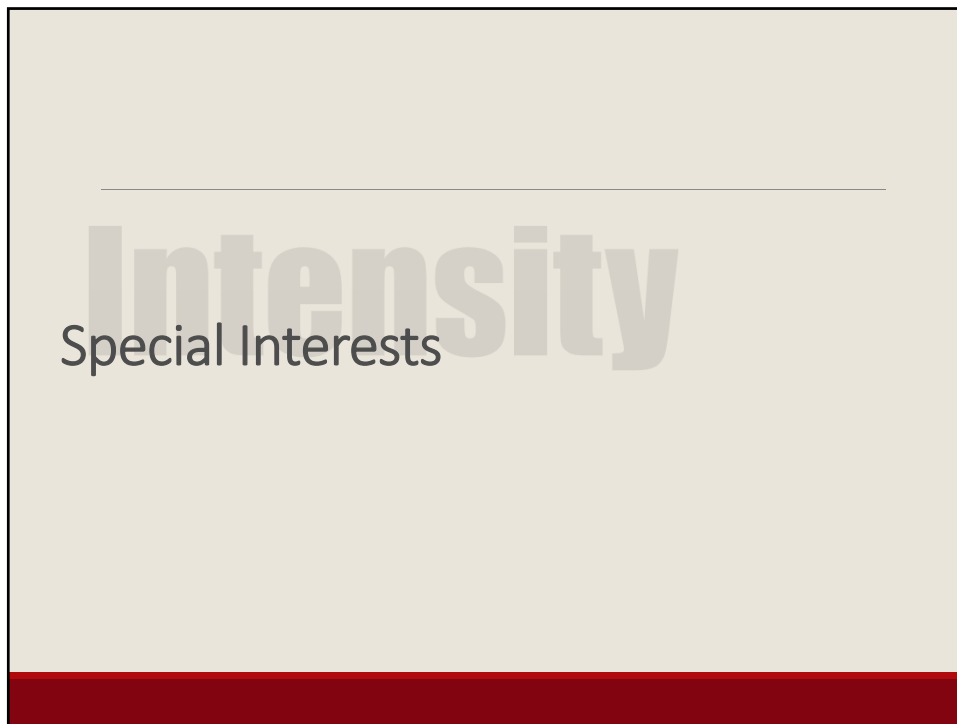
Research of equivalence of autism symptoms domains in males and females with ASD using the Social Responsiveness Scale (SRS) and the Autism Diagnostic Interview – Revised (ADI-R) found that cognitively able females with ASD had **substantially lower levels of restricted interests, this difference could not be accounted for by measurement bias.**

Frazier and Hardan. Equivalence of symptom dimensions in females and males with autism. *Autism*, 2016, Aug 7

Less prominent restrictive /repetitive → misclassified

Our findings raise the possibility that girls with less prominent [restricted/repetitive behaviors] may **miss being tested for ASD or get misclassified** as having **social communication disorder** . . . Regardless of the potential impact on diagnosis, our findings point to a need for further research on the development of clinical instruments that are better tailored towards autism in females.

Supekar & Menon (2015). Sex differences in structural organization of motor systems and their dissociable links with repetitive/restricted behaviors in children with autism. *Molecular Autism* ,;6:50.

A photograph of Taylor Swift performing at a piano. She is wearing a silver sequined jacket and has her mouth open as if singing. A vintage-style microphone is in front of her. The piano has the word "reputation" written on it in gold.

Special Interests

Circumscribed interests may be more **social in nature**

- Animals
- Dolls
- Pop-groups
- Classic literature
- Imaginary friends
- Fantasy Kingdoms
- Princesses



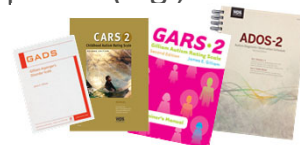
“A girl with autism may be fascinated by horses or by a particular pop star,” This isn’t unusual among girls, and **may not stand out as much** as a boy who is obsessed with the Latin names of plants, for example. “**But the intensity and narrowness of [her] interest is unusual.**” Happé

Instrument Limitations

Standardization samples for most instruments include more boys than girls.

Lack of gender norms may lead to gender bias when “cutoff” scores are used.

Screening instruments are not designed to assess for different manifestations of symptoms (e.g., females).



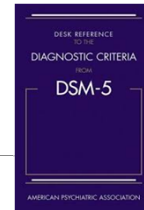
Koenig, K., & Tsatsanis, K. D. (2005). Pervasive developmental disorders in girls. In D. J. Bell, S. L. Foster, & E. J. Mash (Eds.), *Handbook of behavioral and emotional problems in girls* (pp. 211–237). New York, NY, US: Kluwer Academic/Plenum Publishers.

Constantio, J.N. & Charman, T. (2012). Gender bias, female resilience, and the sex ratio. *Journal of the American Academy of Child & Adolescent Psychiatry*, 51(8), 756-758

Diagnostic Criteria

“It should be borne in mind that the diagnostic criteria were formulated on basis of behaviors and features found in boys” (p.633).

ASD looks different in females but the diagnostic criteria are based on boys and men.



Van Wijngaarden-Cremers et al. (2014). Gender and age differences in the core triad of impairments in autism spectrum disorders: A systematic review and meta-analysis. *Journal of Autism and Developmental Disorders*, 44-627-635.

Gender Related Diagnostic Issues Statement from DSM-5

*“ In clinic samples females tend to be more likely to show accompanying intellectual disability, which suggests that girls without accompanying intellectual disability or language delays may go **unrecognized**, perhaps because of **subtler** manifestation of social and communication difficulties.”*





To make matters worse

Masking, blending, acting, pretending, mimicking, camouflaging

Camouflage

“ . . . Girls with Asperger’s syndrome may be more difficult to recognize and diagnose due to coping and **camouflaging** mechanisms, which can also be used by some boys. One of the coping mechanisms is to learn **how to act** in a social setting . . .” (Attwood, 2007, p.46).



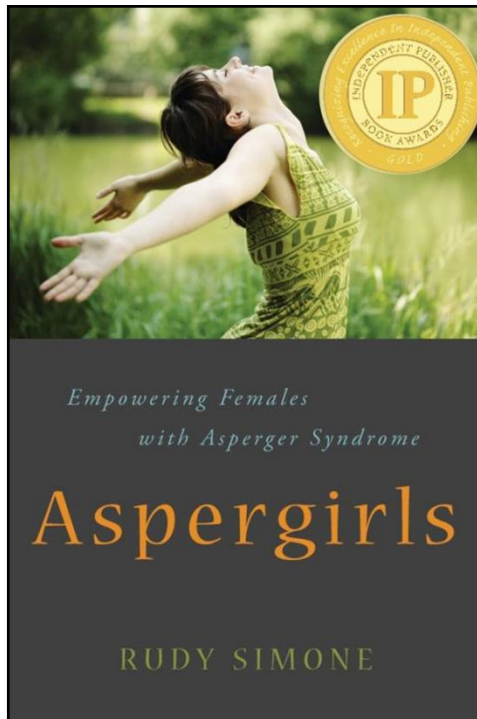
Attwood, T. (2007). The complete guide to Asperger’s syndrome. London: Jessica Kingsley Publishers.

Mask



Some girls are particularly interested in social interaction. They observe, analyze, and imitate the behaviors of other girls and **adopt** the “observed **persona** in their interaction with others ... As such, it appears that **the restricted interests of affected females may actually mask the presentation of their social deficits** (Kirkovski, Enticott, & Fitzgerald, 2013, p.2587).

Kirkovski, M., Enticott, P. G., & Fitzgerald, P. B. (2013). A review of the role of female gender in autism spectrum disorders. *Journal of autism and developmental disorders*, 43(11), 2584-2603.



“I don’t think [females with ASD] are rarer. There really is a very burgeoning awareness that women on the spectrum are **better actors**. There is more pressure on us from childhood to be social and to behave in a way that is not shocking or strange. We are good actors, and for most of us that’s why we go undiagnosed or misdiagnosed.”

Primary

“Comorbidity is to be expected”

(Gillberg & Billstedt, 200, p.237)

65% comorbid psychiatric disorder (Ghaziuddin et al, 1998)

44% Specific Phobia (Leyfer, et al., 2006)

37% Obsessive Compulsive Disorder (Leyfer, et al., 2006)

31% ADHD (Leyfer, et al., 2006)

10% Major Depression (Leyfer, et al., 2006)

“Primary”

Autism does not apply if a child’s educational performance is adversely affected *primarily* because the child has an emotional disturbance...



Operating Standards for Ohio Educational Agencies Serving Children With Disabilities (2008)

primary; adjective: Primary

pri·ma·ry 'prī, merē, 'prīm(ə)rē/*adjective:*

1. of chief importance
2. earliest in time or order of development

