

OH! THE POS-ABILITIES!©

**WHAT COLLABORATIVE PROFESSIONALS SHOULD KNOW WHEN FAMILIES REQUIRE
EXTRAORDINARY CONSIDERATION**

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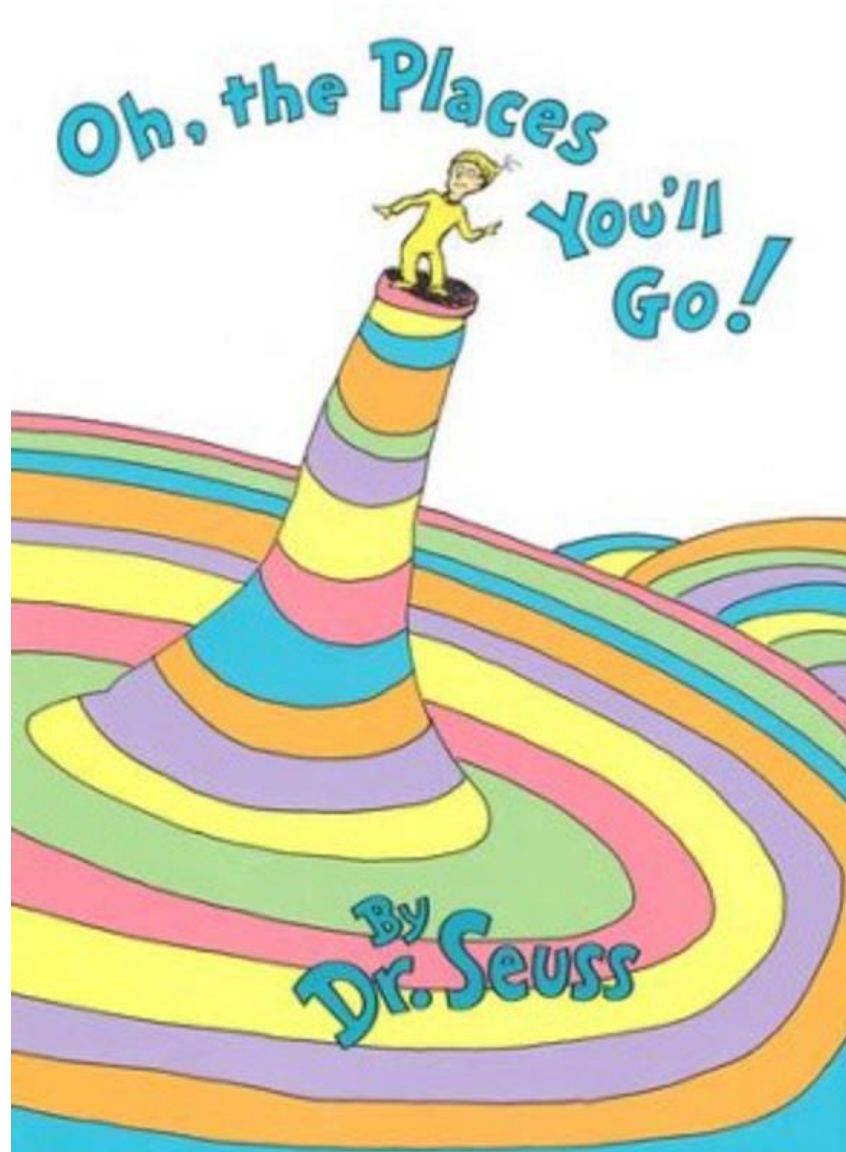
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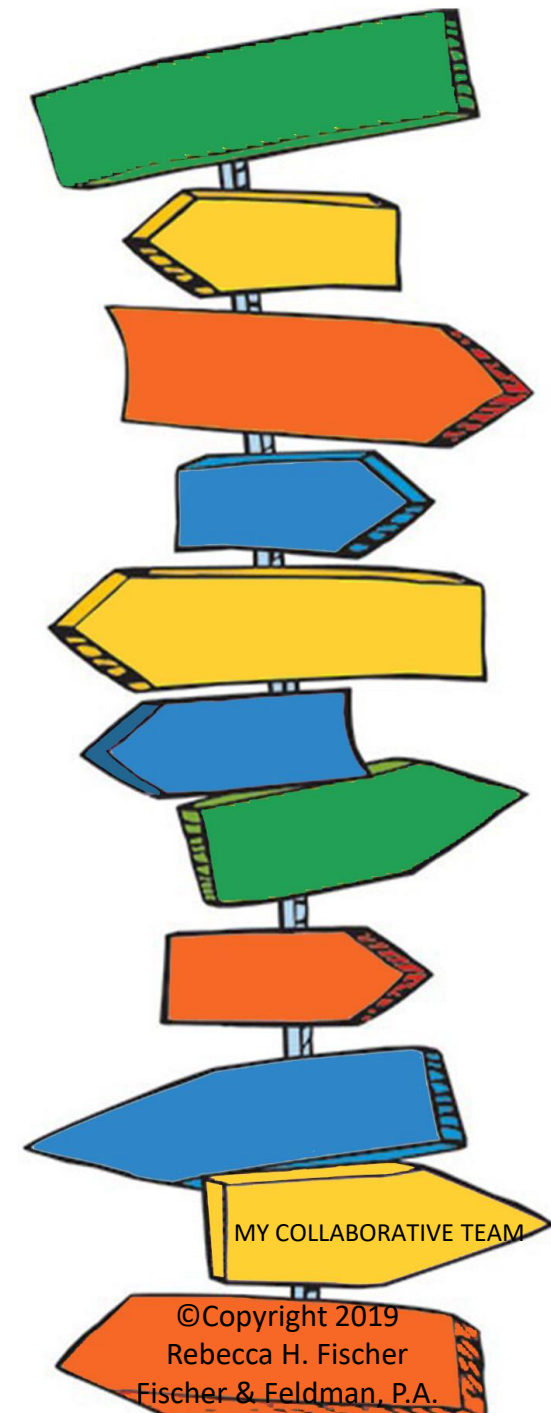
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14 IDEA CATEGORIES

1. **Autism**
2. **Deaf-Blindness**
3. **Deafness**
4. **Developmental Delay**
5. **Emotional Disturbance**
6. **Hearing Impairment**
7. **Intellectual Disability**
8. **Multiple Disabilities**
9. **Orthopedic Impairment**
10. **Other Health Impairment**
11. **Specific Learning Disability**
12. **Speech or Language Impairment**
13. **Traumatic Brain Injury**
14. **Visual Impairment Including Blindness**



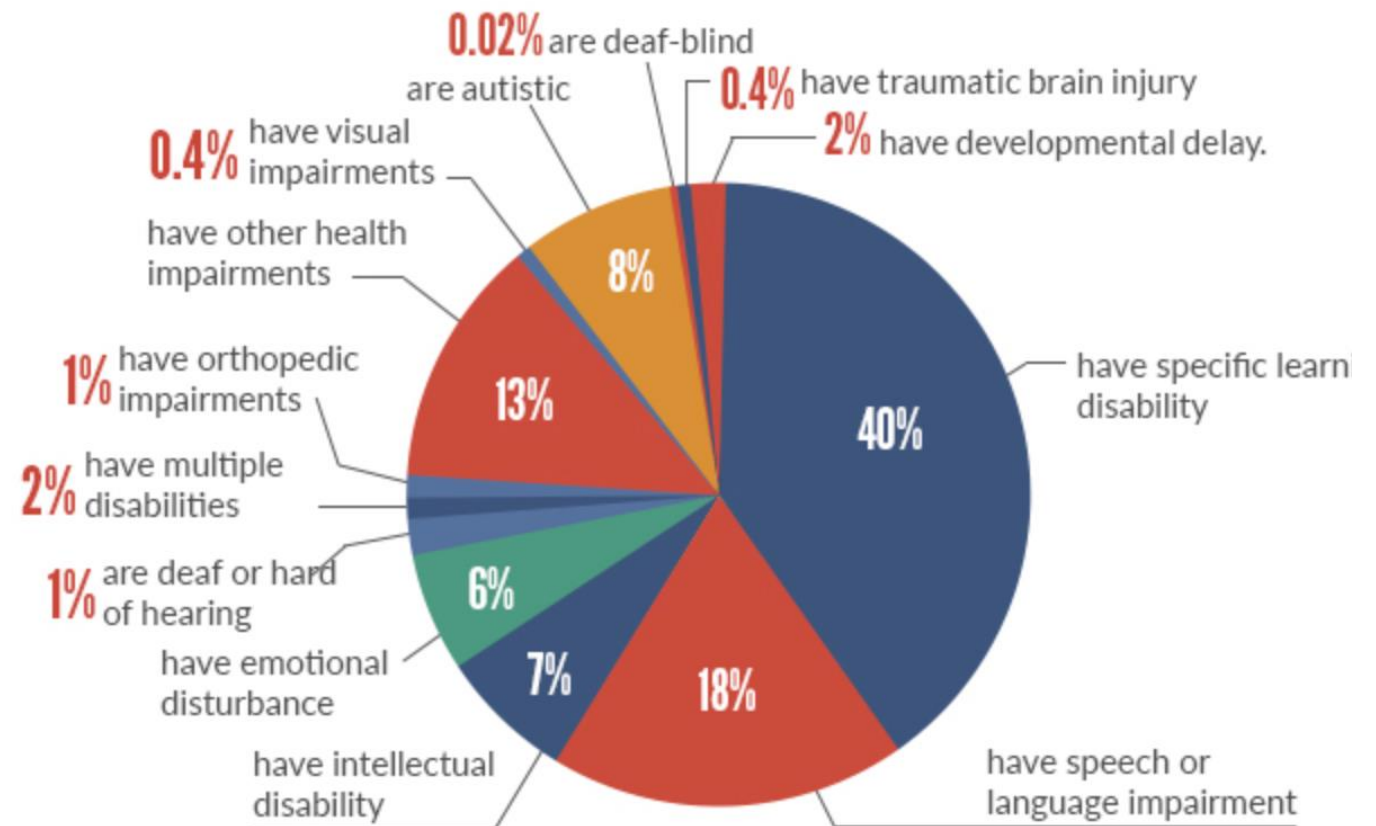
EDUCATION

Among **68 million** students ages 6 to 21 in the United States

about **5.7 million** (8.4%) received special education services under IDEA in 2012

A total of **6.4 million** youth ages 3 to 21 received special education services under IDEA in 2012

Among students **ages 6 to 21** receiving special education services

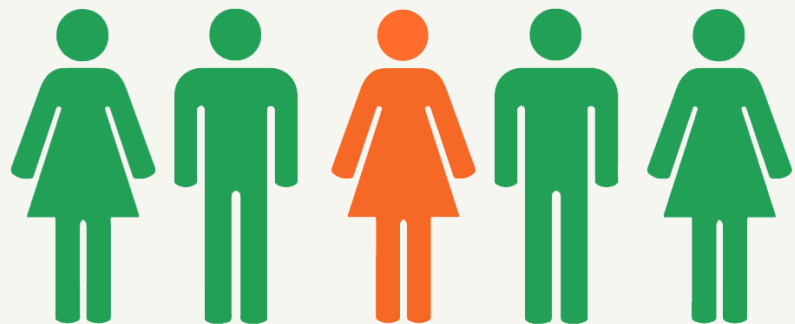




1 IN 20 CHILDREN

globally have a disability

Who Are People With Disabilities in the United States?



1 in 5
U.S. Adults, or 64 million people,
have a disability



Of those, **35%**, or 22 million,
are of prime working-age
(ages 16–64)

Source: *A Hidden Market: The Purchasing Power of People with Disabilities*, 2018



Case Law in Special Education

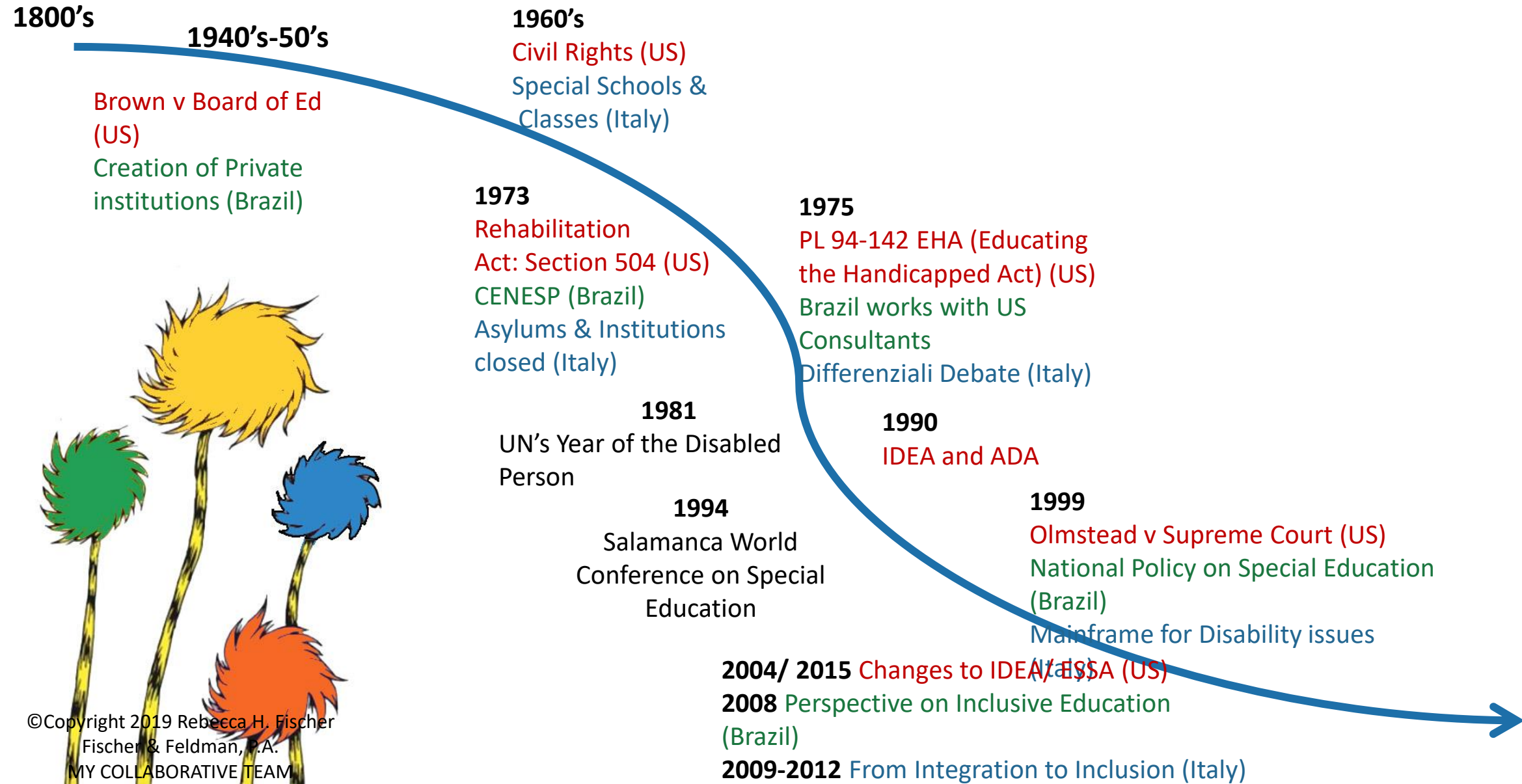
- Brown v. Board of Education (1954) – Kansas
 - <https://www.youtube.com/watch?v=TTGHLdr-iaK>
- Hobson v. Hansen (1967) – DC
 - <https://usedulaw.com/333-hobson-v-hansen.html>
- Diana v. Board of Education (1970) – California
 - <https://www.qc.cuny.edu/Academics/Degrees/Education/ECP/BilingualCenter/Documents/Newsletters/HistoryV2-4.pdf>
- Mills v. Board of Education (1972)
 - <https://disabilityjustice.org/right-to-education/>
- PARC v. Commonwealth of Pennsylvania (1972)
 - <https://www.youtube.com/watch?v=QtFmp3XduaQ>
- Wyatt v. Stickney (1972)
 - <https://disabilityjustice.org/wyatt-v-stickney>
- Larry P. v. Riles (1972)
 - https://www.youtube.com/watch?v=SMDU_dXY6Zc
- Armstrong v. Kline (1979)
 - <https://casetext.com/case/armstrong-v-kline-3>
- Jose P. v. Ambach (1984)
 - <https://www.osc.state.ny.us/sites/default/files/reports/documents/pdf/2018-11/report-3-2009.pdf>
- Daniel R.R. v. State Board of Education (1989)
 - <https://sites.google.com/site/jessalynsimmsfinal/influential-court-cases/daniel-r-r-vs-state-board-of-education>
- Olmsted vs L.C.
 - https://www.ada.gov/olmstead/olmstead_about.htm
- Schaffer v. Weast (2005)
 - <https://www.oyez.org/cases/2005/04-698>

A decorative banner with multiple wavy, overlapping lines in the colors of the rainbow (red, orange, yellow, green, blue, purple) serves as a background for the title.

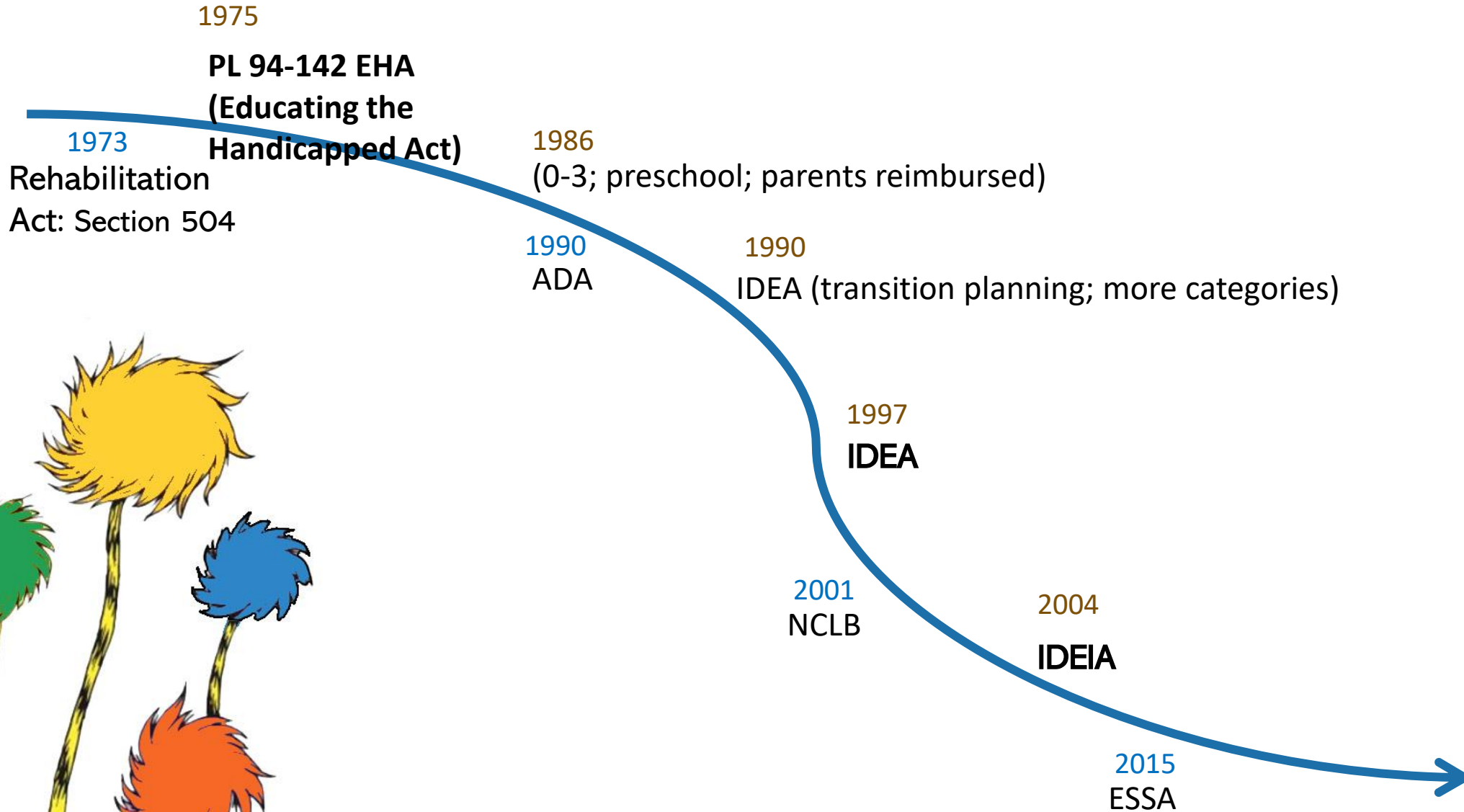
A History of Special Education through US Legislation

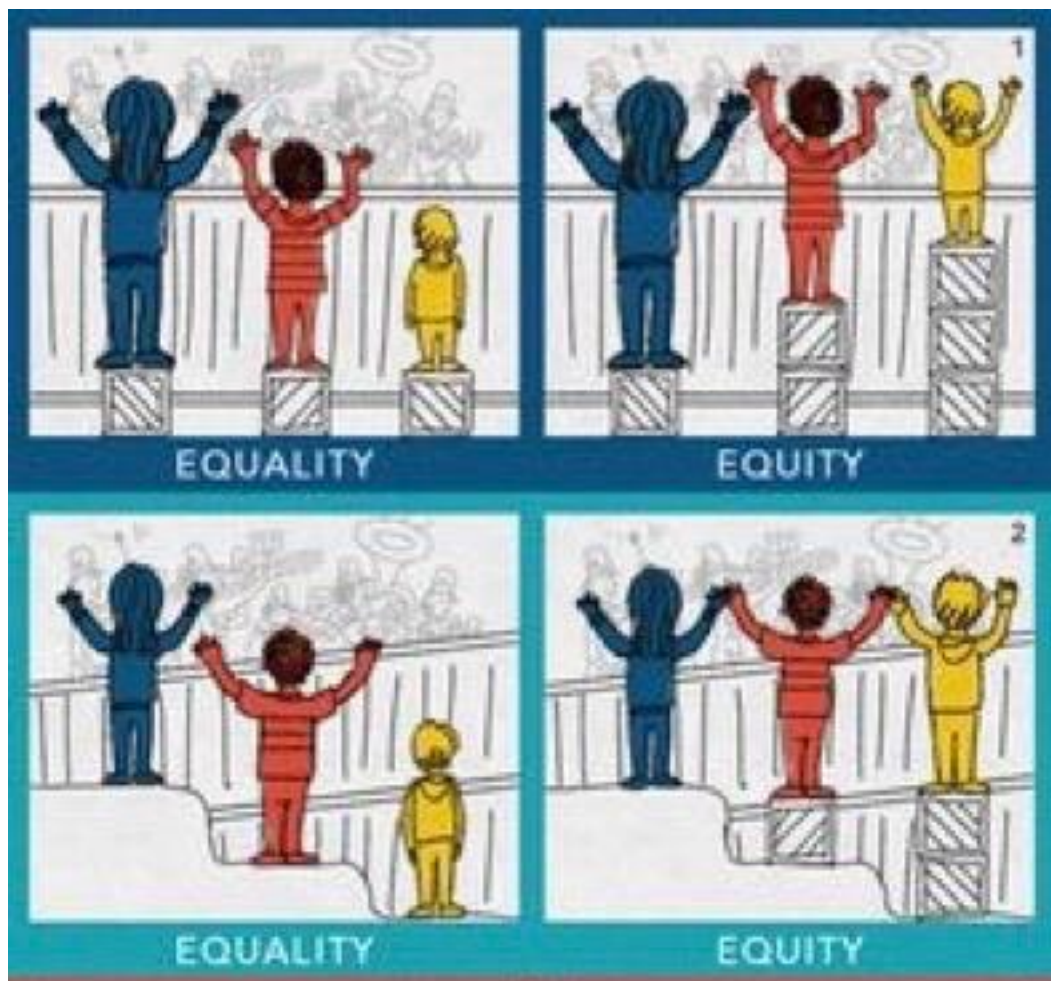
- EHA, 1970
- Rehabilitation Act, 1973
 - Section 504
- PL 94-142 (EAHCA), 1975
- EHA amendment, 1986
- IDEA amendment, 1990
- IDEA amendment, 1997
- IDEA amendment, 2004

The Evolution of Special Education



The Evolution of Special Education in the US





Equity versus Equality

WHY COLLABORATIVE?

- The **disability rights movement** was/is a civil and human rights movement against discrimination
 - Demand for equal access/equal opportunity
 - To everything society has to offer
- **Accountability** means taking the extra (as a society taking care of each other) steps during the “process” in order for there to be equity in the “results”
 - The Collaborative Process is the only way to achieve equity in divorce for children with special needs
- **Litigation** will cause further **destruction** to the family



**THIS IS WHERE YOU COME
IN!**

Topics

- Collaborative Marital Settlement Agreement and Parenting Plan
- Child Support
- Property Distribution (including retirement accounts)
- Timesharing
- Support Systems During and After Divorce



DO ANY OF THE CHILDREN HAVE SPECIAL NEEDS?

**PHYSICAL, INTELLECTUAL, EMOTIONAL, OR LEARNING
DISABILITY OR BEHAVIOR OR MOOD DISORDER**





DO ANY OF THE CHILDREN HAVE SPECIAL NEEDS?

PHYSICAL, INTELLECTUAL, EMOTIONAL, OR LEARNING DISABILITY OR BEHAVIOR OR MOOD DISORDER

- What is/are the official diagnosis
- Who made the diagnosis and how old was the child at the time of diagnosis
- What are the symptoms and when did they first appear
- What testing has been done to date
- What follow-up has been done since the initial diagnosis, i.e., what other doctors or specialists have seen the child
- What medications, therapies or treatments is the child currently receiving
- Who are the therapists
- Frequency and duration of therapies
- How long is therapy expected to continue and are different therapies anticipated for the future
- Costs associated with medications and therapies
- How are the costs paid, privately or through insurance
- Any other extraordinary costs associated with providing the child with requisite care
- Are there any therapies recommended for the child he/she is not receiving



DO ANY OF THE CHILDREN HAVE SPECIAL NEEDS?

Continued

- What are the costs associated with school if private
- Tutors, caregivers, drivers
- What is the child's prognosis
- How does the diagnosis affect the child's life now and how will it affect his/her life in the future
- Does the child attend a special school or program (is there MacKay or Gardiner moneys?)
- How does the diagnosis impact siblings
- Who is the primary caregiver
- Is the other spouse engaged with the child's care and treatment, i.e., day-to-day management of the child's life, attendance at therapies
- How much time is spent each day addressing the needs of the child
- Has the child's diagnosis impacted either spouse's career, career advancement or earning potential
- Does the child have an Individualized Education Plan (IEP) (specialized instruction plan) or 504 Plan (reasonable accommodations plan at school)
- How does parent anticipate timesharing
- How does parent anticipate his/her ability to share costs of all





Considerations for Collaborative Marital Settlement Agreement and Parenting Plan

- Special Needs
- Child Support Deviation
- Unique Parenting Plan
- Property Distribution Equities
- Guardianship or Guardian Advocate
- Special Needs Trust

**“Sometimes the questions are
complicated and the answers
are simple.”**

– Dr. Seuss



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CONSIDERATIONS REGARDING CHILD SUPPORT

In addition to standard child support, certain items should be considered when determining support in a **Collaborative divorce** involving a child with special needs

CONSIDERATIONS REGARDING CHILD SUPPORT

- Costs of therapy
- Doctor bills, uncovered amounts and co-pays
- Bills of other practitioners, uncovered amounts and co-pays
- Medications, uncovered medications and co-pays
- Cost of supplements
- Cost of equipment
- Expenditures for supplies
- Expenses of caregiver training
- Extra cost of special nutritional requirements
- Extra cost of special clothing and personal care item requirements
- Cost of home modifications
- Cost of vehicle modifications
- Cost of modifications at school
- Nonparental caregiver costs
- Transportation expenses
- Any other costs

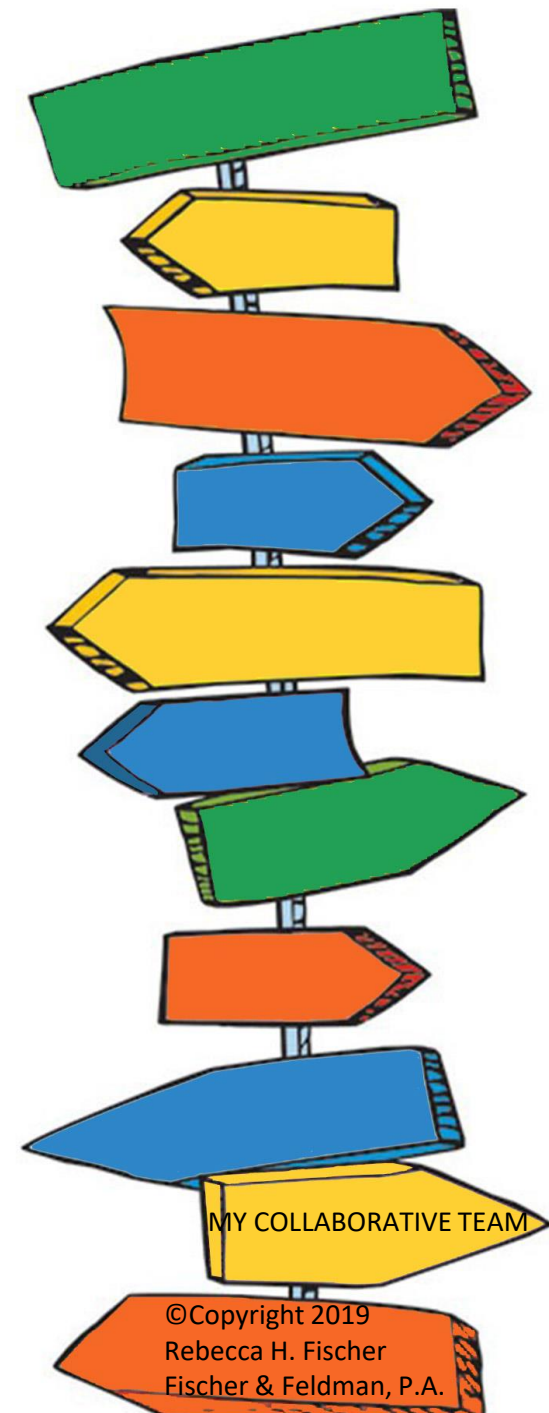
**“Think left and think right and
think low and think high. Oh,
the thinks you can think up if
only you try!”**

-Dr. Seuss



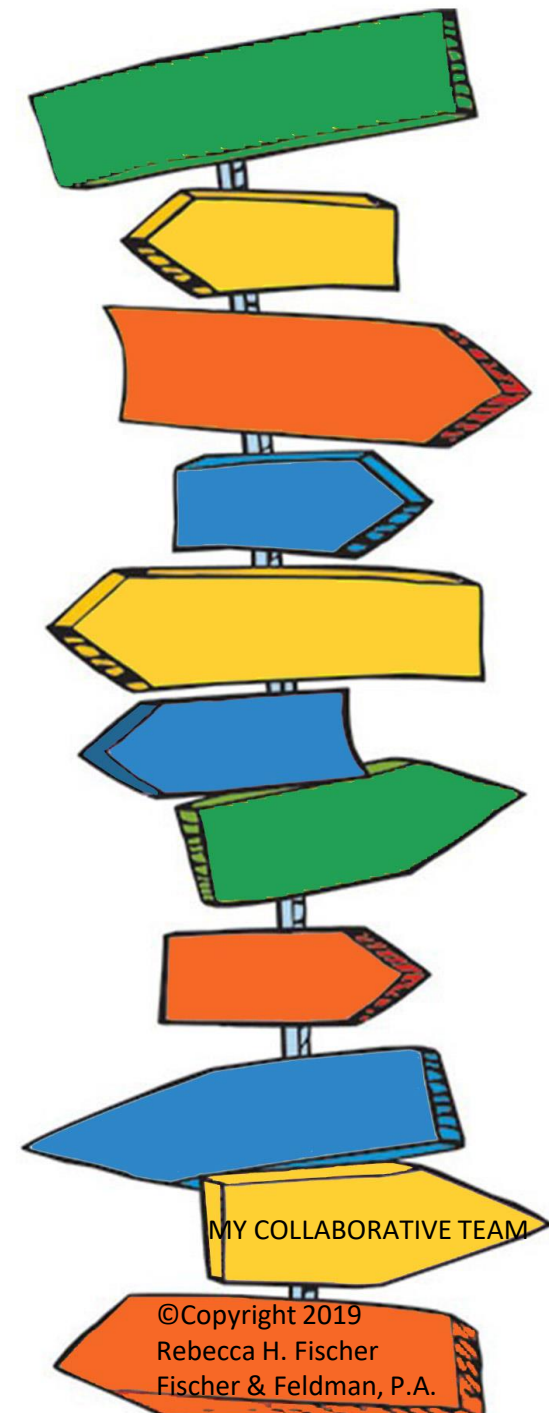
SPECIAL CONSIDERATIONS FOR PROPERTY DISTRIBUTION

The Collaborative Process allows for creative property distribution which meets the unique needs of the family



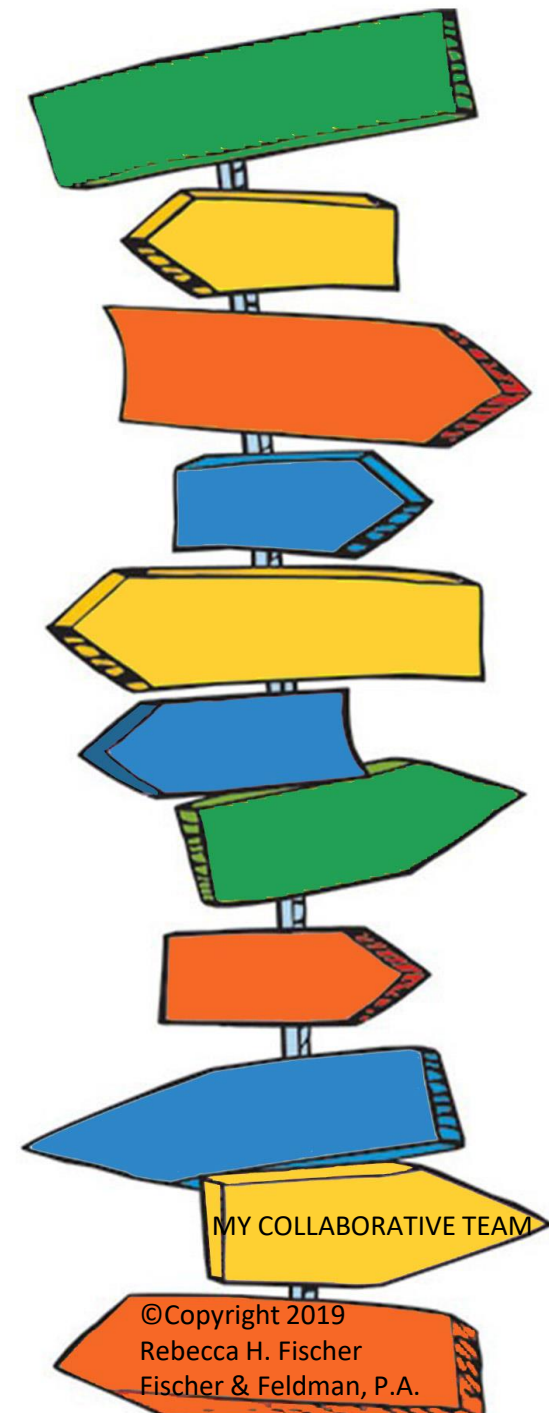
SPECIAL CONSIDERATIONS FOR PROPERTY DISTRIBUTION

- Who is the primary **breadwinner**
- Who is the primary **caregiver**
- How is the **actual daily care** of the child and management of the administrative aspects of her condition apportioned between the parents
- Who actually **spends the time** with the child, taking him to therapy, treatments, and appointments, and doing therapy with the child
- How have the **schedules and jobs/careers** of each parent been affected by the child's special needs
- What was the **job/career picture** of each parent **prior** to the child's special needs
- What is the **job/career picture** of each parent **now**
- What is the anticipated future job/career picture of each parent



SPECIAL CONSIDERATIONS FOR PROPERTY DISTRIBUTION

- What was the **retirement account/pension situation** of each parent **prior** to the child's special needs
- What is the **retirement account/pension situation** of each parent **now**
- What is the **anticipated future retirement account/pension situation** of each parent
- How has each parent been **affected financially** by the child's special needs
- If one of the parents will be required to be **unemployed or underemployed** due to the child's special needs, **how much** money do they **need** from the other parent to meet their needs
- How much is the other parent **able to contribute** to the unemployed or underemployed caregiver parent
- Is it appropriate to consider the **future impact** on the **retirement account/pension** of the unemployed or underemployed caregiver spouse
- Is it appropriate to have the **other parent contribute** amounts after the divorce to a **retirement account/pension** of the



3 STEPS TO FITTING SPECIAL NEEDS TRUSTS INTO YOUR PRACTICE

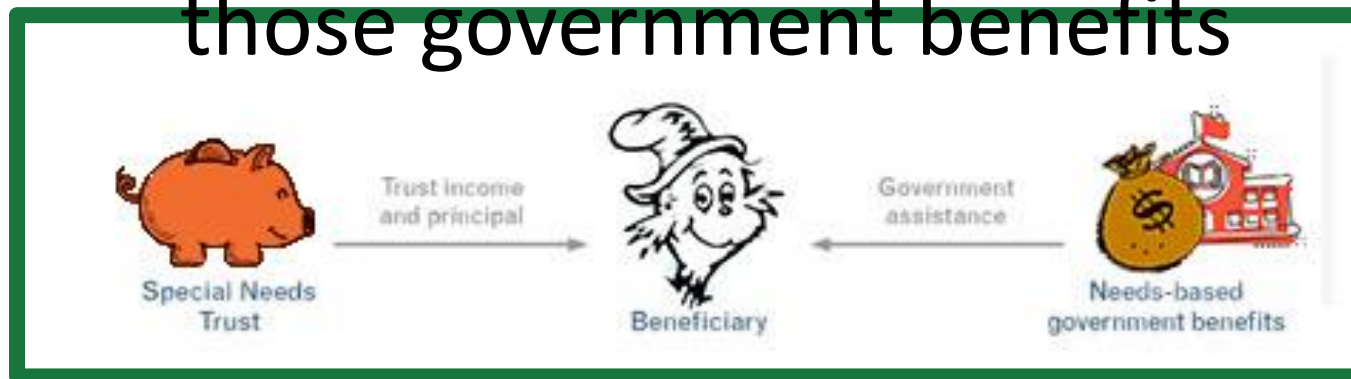
1. Identify the need & stay educated
2. Select the appropriate trustee
3. Refer to an elder law/special needs attorney



Oh the Places You'll Go with Financial Planning

PURPOSE OF FINANCIAL PLANNING

Designed to preserve a beneficiary's eligibility for needs-based government benefits while benefiting from trust assets in such a way as to supplement, not replace, those government benefits



BENEFITS

Supplemental Security Income/ Medicaid



SSI ELIGIBILITY

- Cash assistance program
- For financially eligible individuals 65+, blind or disabled
- Eligibility tied to asset and income limitations

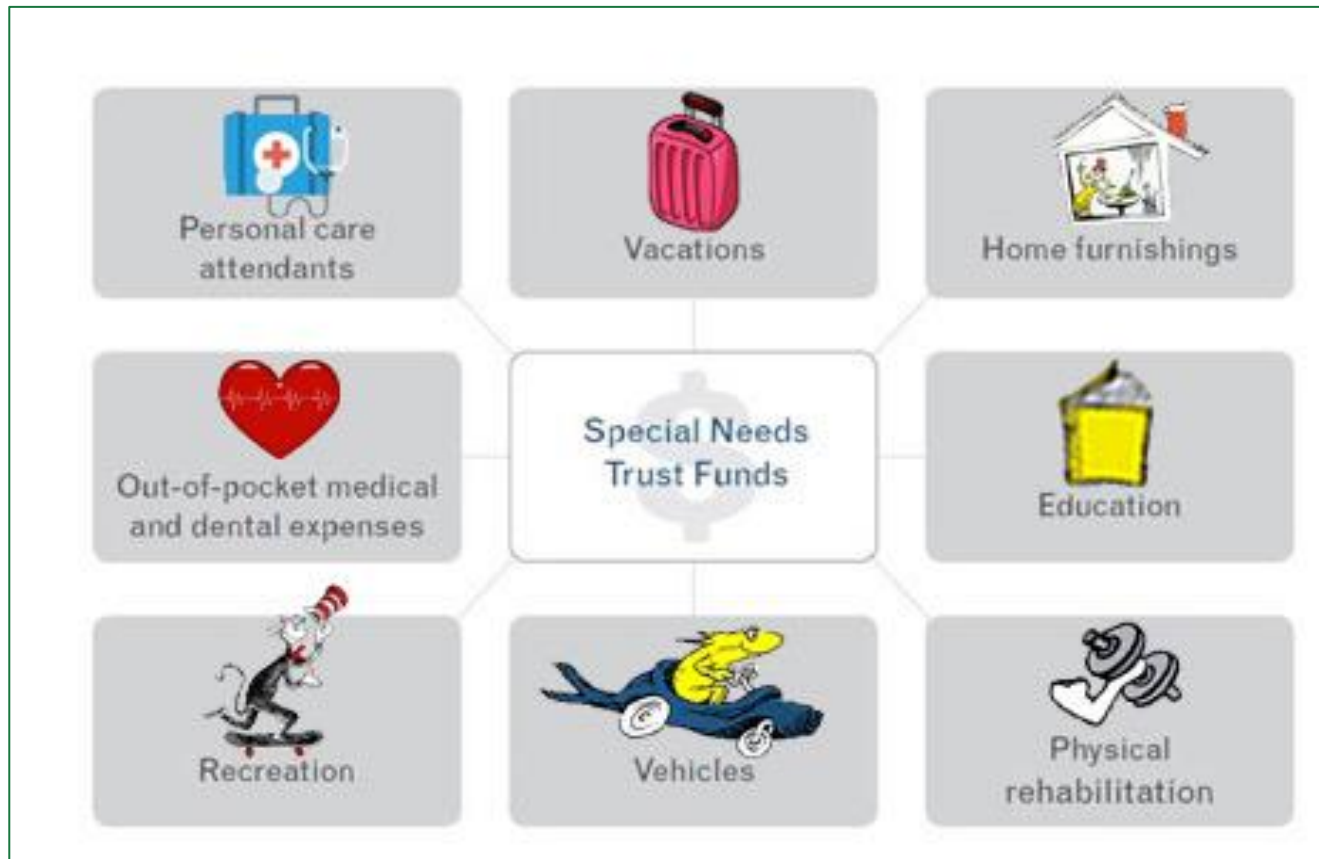


MEDICAID ELIGIBILITY

- Federal/state insurance program
- For certain individuals/families with limited income and resources
- In most states, people who are eligible for SSI are automatically eligible for

Medicaid

QUALIFIED EXPENSES FOR SNT FUNDS



ELEMENTS OF FINANCIAL PLANNING

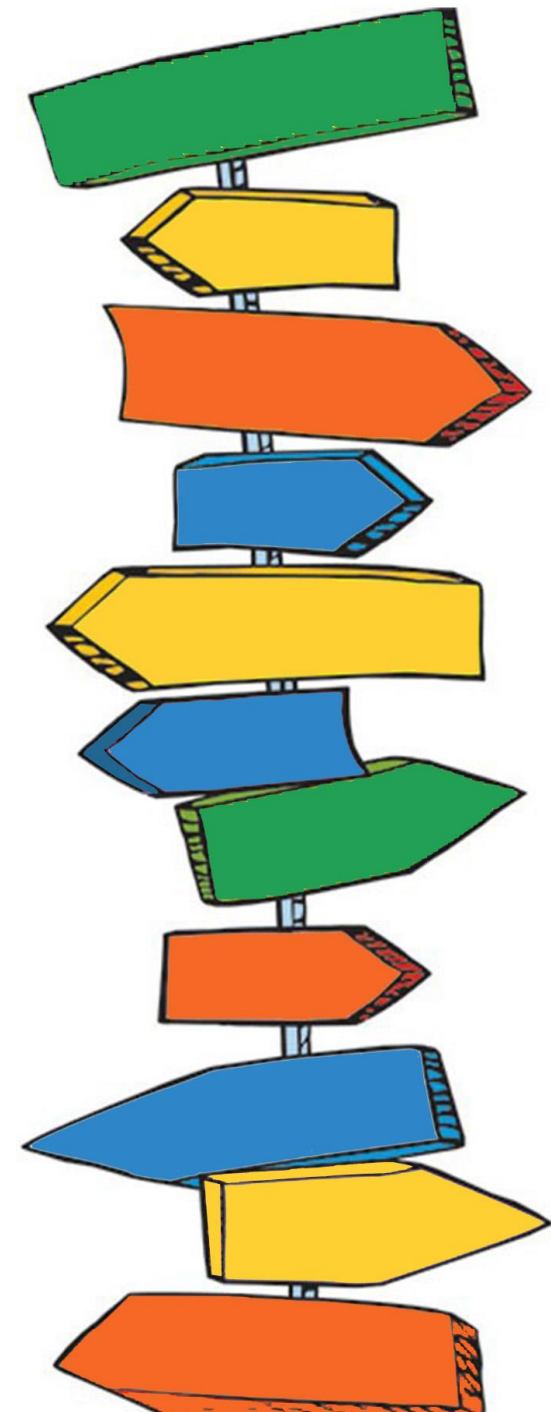
Once the special needs trust is created, additional elements of planning can be introduced:

- budgeting, expense and debt management
- asset and liability projections
- cash flow analysis
- income needs projections
- life and disability insurance needs
- estate planning
- scholarship/grants access
- medical insurance needs



FOUR KEY FACTORS IN EVALUATING TRUSTEE CANDIDATES

- Competence, knowledge and experience
- Conflicts of interest
- Personal connections
- Individual vs. corporate trustees



FOUR KEY FACTORS IN EVALUATING TRUSTEE CANDIDATES

- **Competence, knowledge and experience:** Distributing assets incorrectly can cause a beneficiary to lose needs-based benefits such as Medicaid and Supplemental Security Income. That's why the trustee must thoroughly understand these programs and how to satisfy the qualification requirements. They should also be adept at managing accounts, bills, taxes and other financial matters
- **Conflicts of interest:** The trustee should never act in his or her own interest when allocating funds. These decisions should be based solely on the beneficiary's best interest
- **Personal connections:** A close relationship is critical as there should be frequent communication on changing needs and circumstances, and the trustee should serve the needs of the beneficiary for the duration of the trust or the beneficiary's life
- **Individual vs. corporate trustees:** Properly managing an SNT means understanding the beneficiary's disabilities and clearly communicating with the beneficiary or their parents, caregivers or guardians, which can require a significant time commitment. The trustee must be able to prudently manage the assets held for the beneficiary's benefit, as well as understand governmental regulations and how to comply with them. He or she also should know what can and cannot be paid for through the trust, and how to prepare and retain records of earnings and disbursements for tax purposes. A corporate trustee is often better positioned than an individual trustee to effectively administer an SNT in a way that is compliant with state and federal laws

3 STEPS TO FITTING SPECIAL NEEDS TRUSTS INTO YOUR PRACTICE

1. Identify the need & stay educated
2. Select the appropriate trustee
3. Refer to an elder law/special needs attorney



1: IDENTIFY NEED

- Identify clients who have children who may have a disability or special needs
- Communicate the desirability of SNTs as a way to ensure wealth transfer *without* jeopardizing the beneficiary's government benefits
- Good option for beneficiaries with diminished capacity or an inability to handle assets independently
- Identify professional referral sources for first-party SNTs
- Stay educated. This field of law has experienced recent changes (i.e. ABLE legislation and the Special Needs Trust Fairness Act)



2: SELECT THE APPROPRIATE TRUSTEE

- Discuss the benefits of a corporate trustee vs. an individual trustee
- SNT administration requires a working knowledge of the beneficiary's benefits and the time to appropriately attend to their social, health and financial affairs
- A corporate trustee is often better positioned to effectively administer an SNT in a way that is compliant with state/federal law

“To the world you may be one person but to one person you may be the world.”

– Dr. Seuss.



CONSIDERATIONS FOR THE PARENTING PLAN

- The **Collaborative Team** recognizes the crucial need for a unique plan
- Maintains parents' focus on the needs of the child
- The **Collaborative Process** offers the opportunity to create a personalized timesharing plan to serve the special needs of the child and siblings
- The **Collaborative Team** addresses the impact of the child with special needs on siblings and the effects on the siblings' timeshare
- The **Collaborative Team** addresses the roles of the siblings in the future

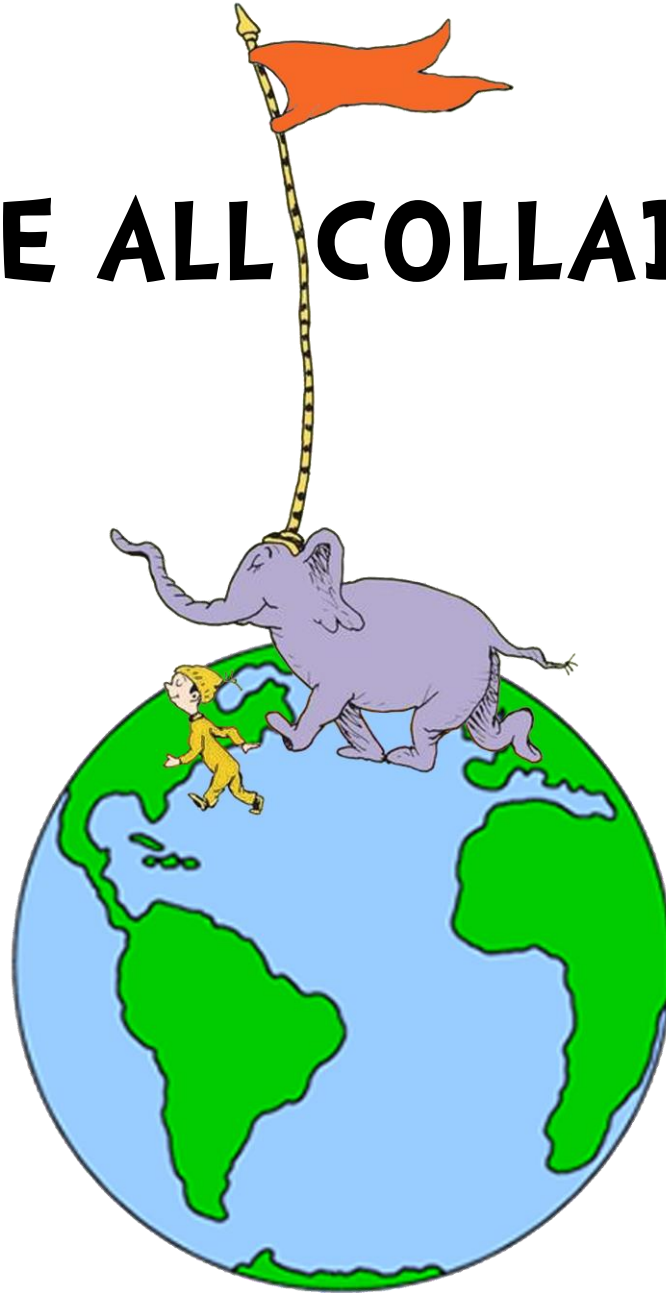
CONSIDERATIONS FOR THE PARENTING PLAN

- Who has been the primary caregiver?
- To whom is the child bonded?
- What has been each parent's response to the child's special needs?
- How supportive and cooperative has each parent been of the child's special needs and treatment?
- What are the daily schedules of each parent?
- What training has each parent had regarding the child's special needs?
- How involved is each parent in the child's daily care; transportation to doctors, therapists, and treatments; medication administration; home therapy and modifications; administrative aspects of the child's special needs, such as making appointments, researching options available for the child, determining a course of treatment or action plan?
- How has each parent's life changed since the child was diagnosed?

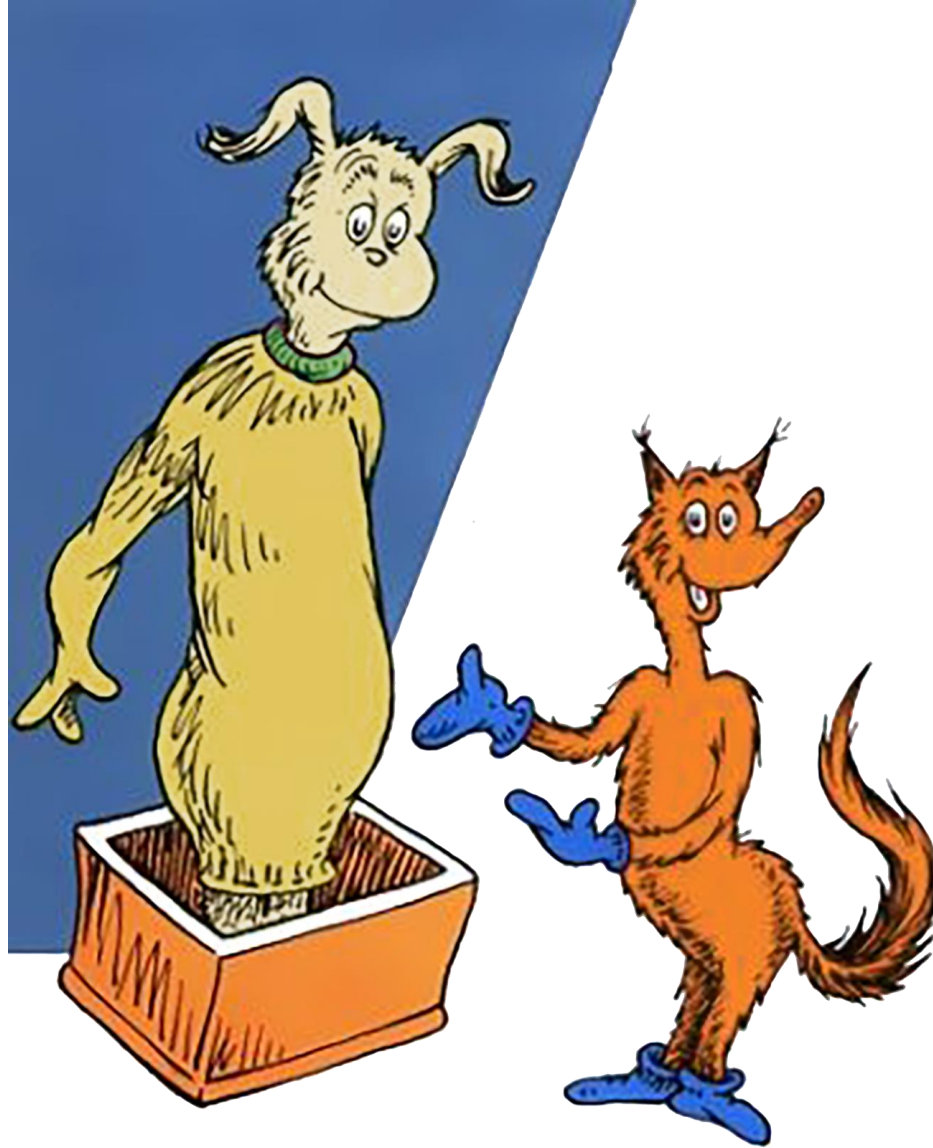
CONSIDERATIONS FOR THE PARENTING PLAN

- How will the various timesharing alternatives affect the child's schedule, comfort, treatments, therapies, medication administration?
- What do the child's therapists and medical professionals suggest as the timesharing arrangement that would be in the child's best interests?
- What does the child want?
- How likely is each parent to follow through on the child's medication, treatments, and appointments during their periods of timesharing?
- How likely is each parent to follow through on the child's daily care during their periods of timesharing?
- How likely is each parent to follow through on maintaining the consistency of the child's schedule and routines during their periods of timesharing?
- Where will the timesharing occur? Will this setting be appropriate for the child's condition? Will the child be comfortable and safe there? Will it be an appropriate environment for the child?
- How will the various timesharing alternatives affect the child's schedule, comfort, treatments, therapies, medication administration?

WE ARE ALL COLLABORATIVE

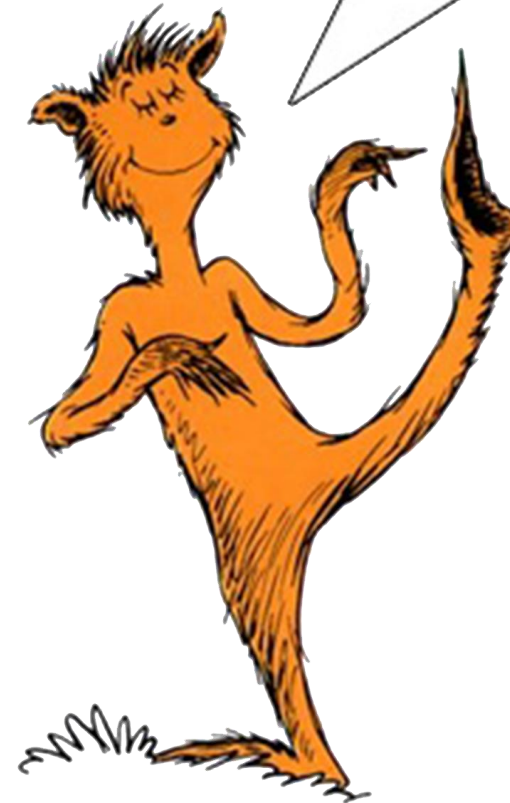
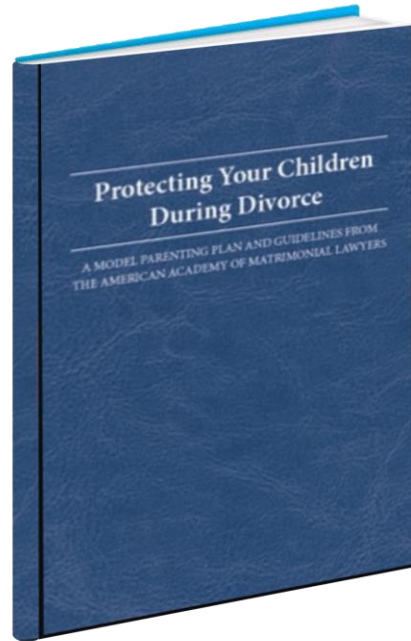


**THINK
OUTSIDE
THE BOX**



**PARADIGM
SHIFT**





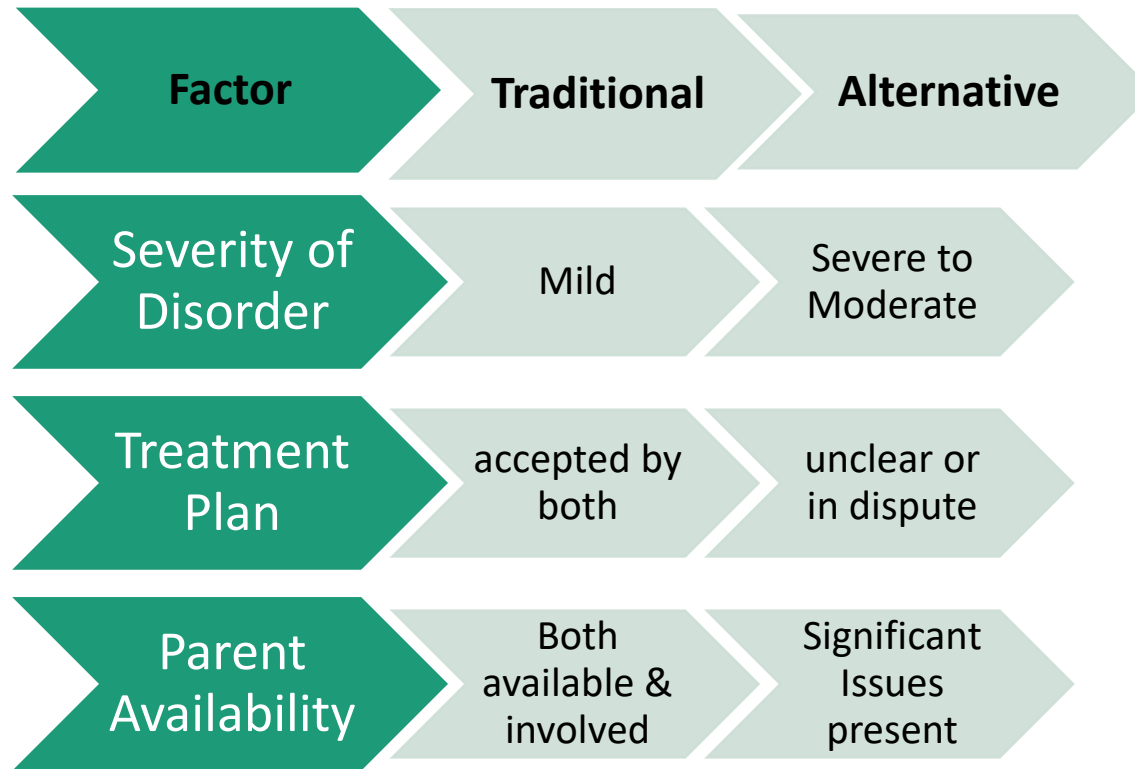
SDRI

SEPARATION & DIVORCE READINESS INDICATOR

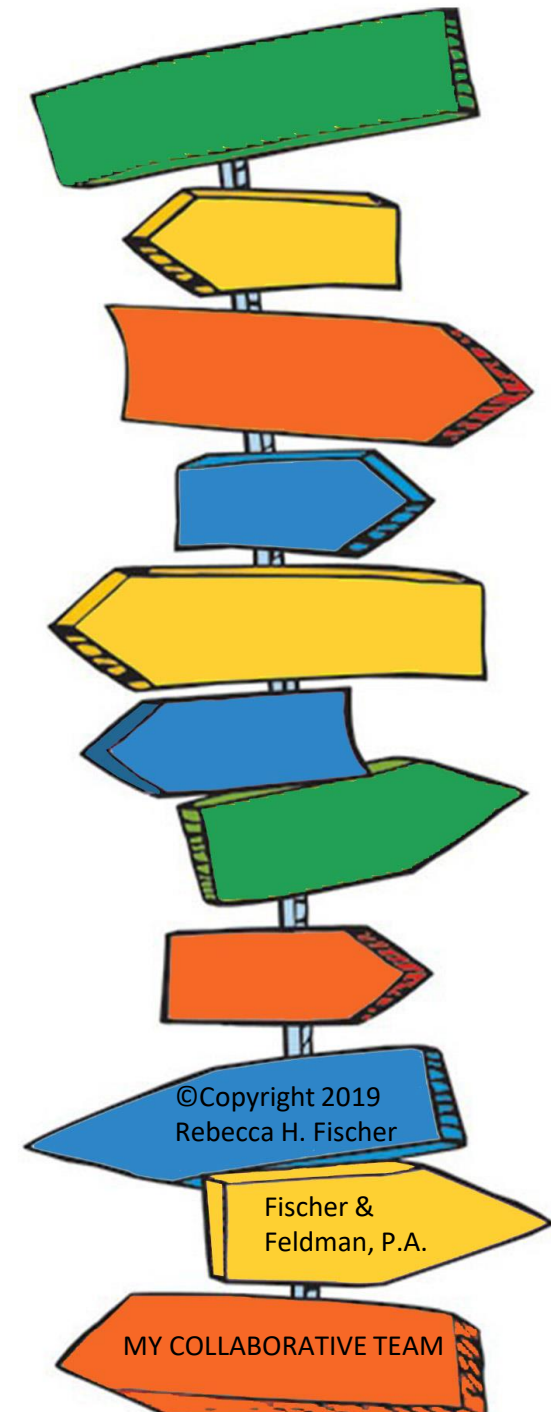
RISK AND PROTECTION

- **Safety:**
 - Physical safety/Supervision
 - Environmental Safety
- **Parenting Skills:**
 - Temperament Match
 - Structure/Routine
 - Discipline
 - Time/Availability
 - Understanding/ Acceptance of child's condition
 - Emotional attachment
- **Medical Needs:**
 - Openness to intervention
 - Availability for appointments
- **Advocacy**
- **Educational Needs:**
 - Awareness of special educational needs
 - Co-parenting and communication about educational needs
 - Steps to arrange special services
- **Therapeutic Service:**
 - Mental health
 - OT, PT, or others
 - Parent participation in services
- **Parenting Plan Schedule:**
 - Transitions between homes
 - Predictability of schedule
 - Consistency with developmental level (not just chronological age)
- **Financial Considerations**

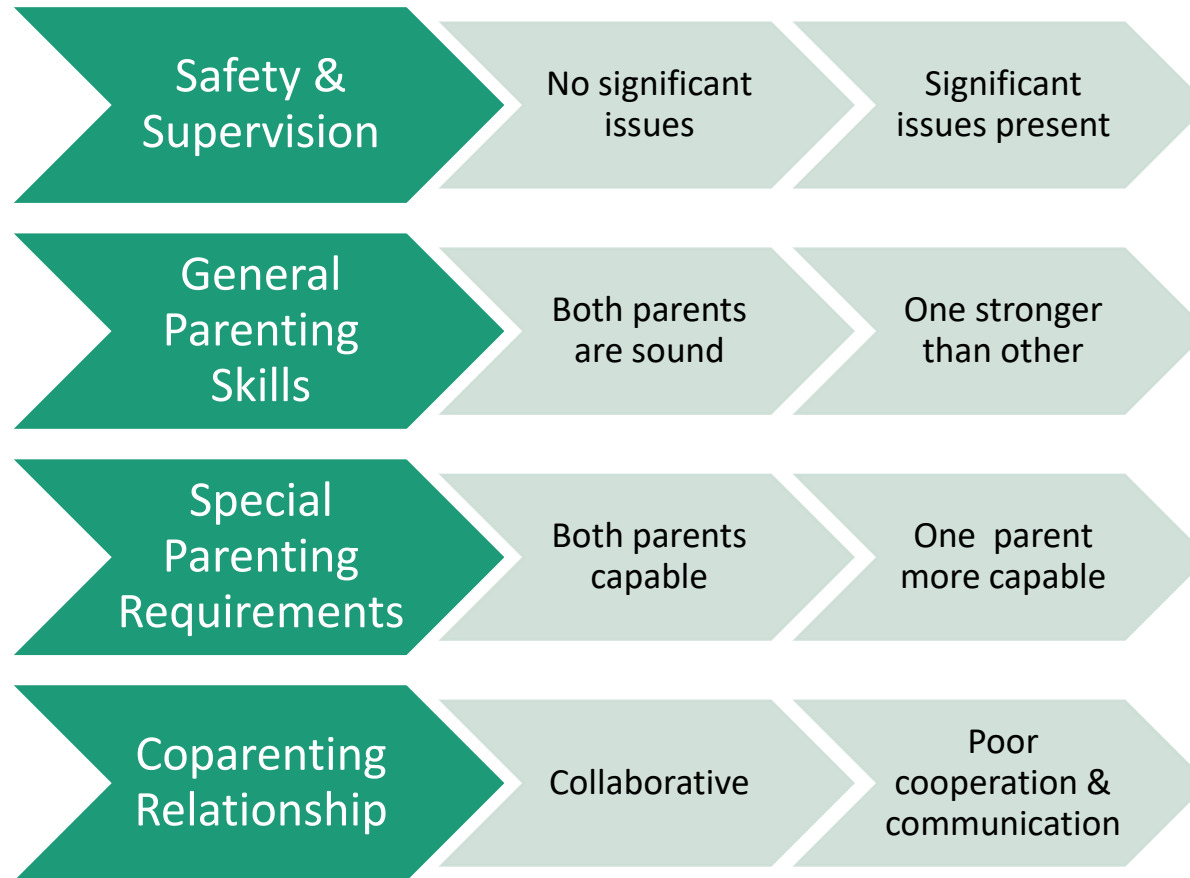
FACTOR ANALYSIS



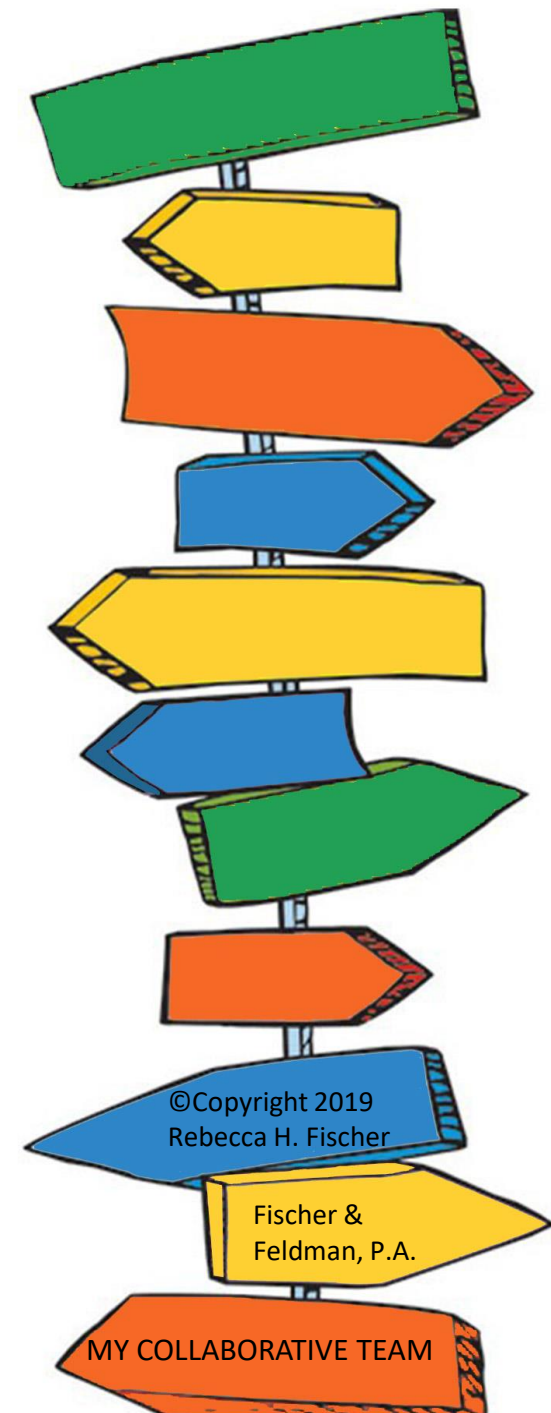
**Factor Analysis informs
Parenting Plan Recommendations
& Determinations**



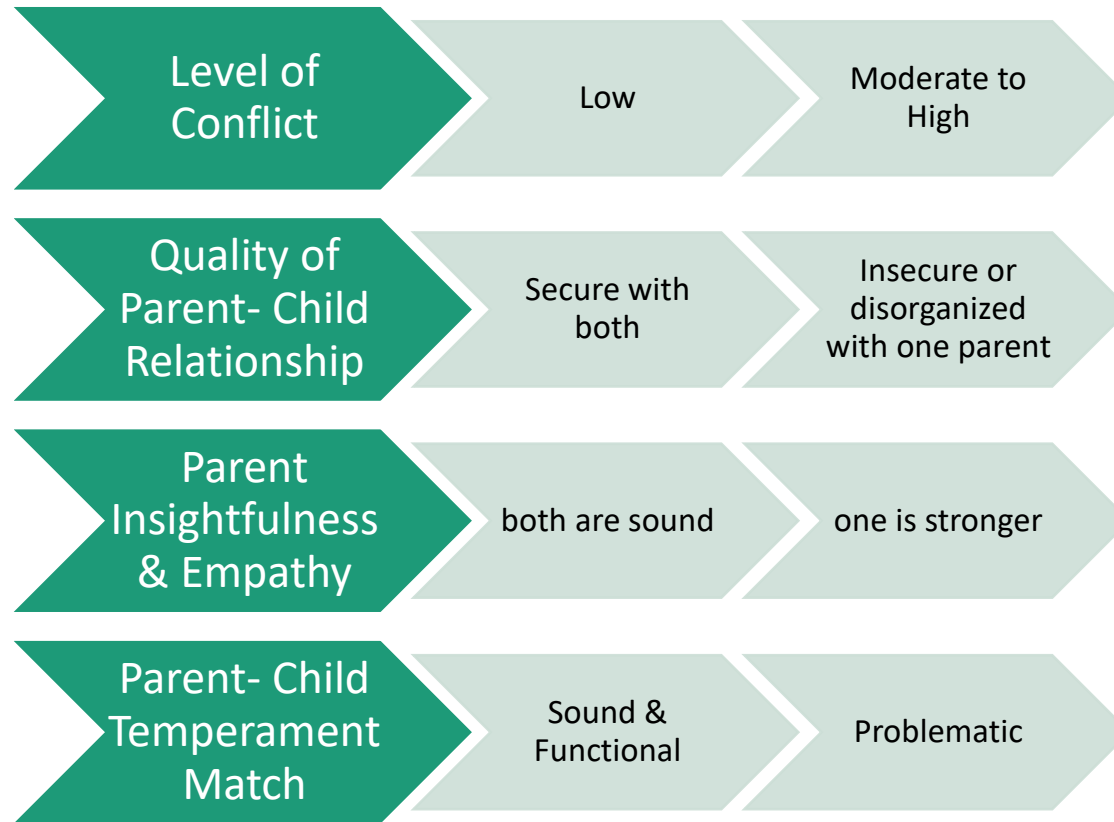
FACTOR ANALYSIS



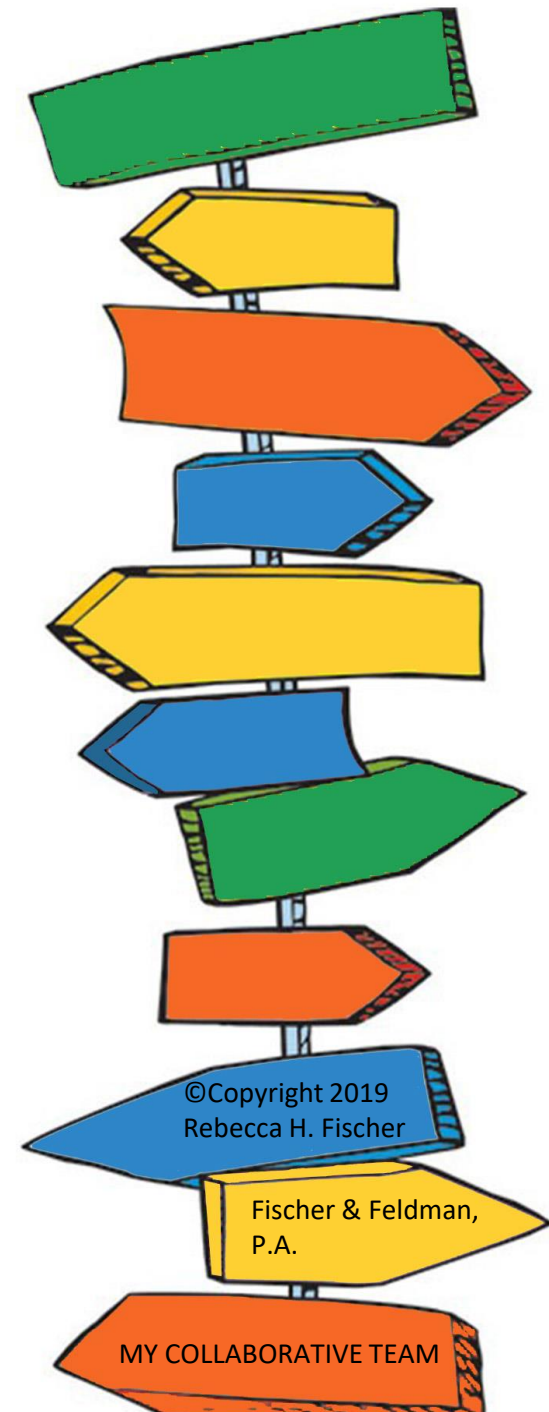
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FACTOR ANALYSIS



**Factor Analysis informs
Parenting Plan Recommendations
& Determinations**



SUPPORT SYSTEMS DURING AND AFTER DIVORCE

- Doctors/Medical Professionals/Therapists/Clergy
- Books & materials
- Classmates, teachers, principals, school counselor
- Children support groups
- Friends, neighbors, and family
- Sibling support groups
- Special Needs Trust/estate distribution
- Who will take care of the child when the parents are no longer able



**“It’s not about what it is, it’s
about what it can become”**

– Dr. Seuss



WHAT I WISH I KNEW THEN

It takes a village and team
of caring partners wanting
the family and children to
realize the greatest
outcome and success



Welcome to Holland



<https://youtu.be/r15PuYoID9>



MyCollaborativeTeam.com
Enlightening the World About Collaborative Divorce



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