

The World of Special Education

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Education in the United States of America has gone through many changes over time. Today, it is the right of all people born in this country to be provided with such an experience. Despite this fact, there is one group that has had to struggle for guaranteed rights—and that is special education. When the idea of compulsory attendance was introduced to the nation in 1918, it seemed as though students with special needs would be equally as qualified to attend school. Who knew that it would take decades for families and supporters to successfully advocate for fair opportunities? Today, through the help of Federal legislations such as IDEA, Section 504, Article 7, and more, all students are provided with an equal and beneficial educational opportunity.

The fundamental principles that all Americans live by are written in the United States Constitution. Upon its creation in 1787, education did not seem to be as important to those back then as it is today. Because of its omission, education is considered to be a “state” matter. However, there are a few implications within the Constitution that acknowledge education, therefore broadening legal rights to those in the special education field. First off, all federal laws stem from the Tenth Amendment. It states, “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people,” (National Archives, n.d.). In other words, the national government has no direct superiority over education. In addition, the General Welfare Clause (Article 1, Section 8) of the Constitution indirectly mentions the funding of land for the use of public education (Yell, 2016). Interestingly, it seems as though education had to be important enough for it to be sponsored on a national level. These two laws define the roles of the federal government in education, and have become the bases for national legal cases concerning said program.

When it comes to special education, no principle is more important than the Fourteenth Amendment of the Constitution. Section 1 of this law states, "...nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws," (National Archives, n.d.). Many successful cases regarding equality in the school system have cited this law to represent a student's right to education—just look at the outcome of the *Brown v. Board of Education* case in 1954. Here, the Supreme Court ruled that segregation in schools was unconstitutional by violating equal protection laws. Educational policies in regards to special education were greatly strengthened from that point forward. Years later, in the early 1970s, the *PARC* and *Mills* cases argued for fair public education for students with special needs, backing evidence suggested from *Brown*. Although *Brown*'s intentions were geared toward race, many saw this as an opportunity to question why students of all categories (i.e. minorities, those with special needs, etc.) were not given the same form of instruction. In all, what makes the Fourteenth Amendment so special is that it contains no exclusions; persons of all races, disabilities, and IQ levels (among other things) are to be lawfully accepted into the general education setting.

In 1973, Section 504 of the Rehabilitation Act referred to banning discrimination toward anyone with a disability. A few years later, the 1975 Education for All Handicapped Children Act (EAHCA) paved the way for special education by combining the "...educational bill of rights with the promise of federal financial incentives," (Yell, p. 42, 2016). EAHCA established significant program guidelines to ensure an appropriate education for students with special needs. In 1990, EAHCA was reformatted and renamed to one of the nation's most prominent acts: The Individuals With Disabilities Education Act, otherwise known as IDEA. The purpose of IDEA today is to ensure states abide by constitutional/equal protection laws in order for them

to receive federal funding, while also requiring schools to provide educational needs to eligible students with disabilities. Prior to this act, over 4 million students with special needs were denied an appropriate education, while others were not allowed in public schools altogether (American Psychological Association, 2016). To add to this, teachers were not well trained in working with specific students, and many programs contained unethical instruction. These should be obvious indications of how imperative many acts, specifically IDEA, have been for reshaping special education.

For the state of Indiana, Article 7 is just as important as IDEA—as Article 7 provides regulations that are coherent to the federal law. Under this article, families will find information about their rights, and the process of obtaining an IEP (which therefore allows them to acquire special education services). Compared to IDEA, Article 7 is more specific in various aspects. For example, the Transition Individualized Education Program section of Article 7 (2014) has lengthier requirements for transition planning, and expects students with services to receive a diploma or certificate of completion. Also, in Article 7's section titled Removals in General (2014), various explanations for when change of placement occurs is defined, while also explaining a parent is not required to confirm these changes. Article 7 is the guideline for all Indiana educators and guardians to follow to warrant legal actions made by one another.

Switching back to IDEA, Part B includes six principles that protect the educational rights of students with disabilities: a free appropriate public education (FAPE), an appropriate evaluation, a guaranteed least restrictive environment (LRE), parent and teacher participation, procedural safeguards, and more importantly, the Individualized Education Program (IEP). Together, these laws promote fairness in public education. The first to be mentioned is the IEP, as it actually encompasses every other pillar in some form.

According to the American Psychological Association, “The purpose of the IEP is to lay out a series of specific actions and steps through which educational providers, parents and the student themselves may reach the child's stated goals,” (2016). In other words, the IEP is really the backbone of IDEA. Any eligible student with a disability will receive an IEP that encompasses present academic levels, measurable annual goals, lists of special services, accommodations, and any other information that will inform parents and the IEP team of where the student is at educationally. Its mere intentions are to help children reach goals in a much easier (and personalized) format. By denying a student his or her rights given through the five other pillars, an IEP would be deemed “ignored”—in which case, breaking the law of IDEA.

Every student with an IEP will automatically receive a free appropriate public education, more commonly known as FAPE. One of the more misunderstood pillars, obtaining FAPE certifies that a student with a disability is provided with the most appropriate form of public education, and in most cases, this is at no cost to parents/guardians. Although FAPE refers to an education being “free,” that is not always the case. Yell (2016) states, “FAPE does not require schools to maximize the potential of students with disabilities,” (p. 184). To expand on that, some parents assume that under IEP guidelines, schools must provide a child with the best programs possible in order to satisfy special services. According to IDEA guidelines, this is not what FAPE represents. Instead, its claim is that free and appropriate education should simply and academically benefit the student. If he or she is progressing, then there is no need to pay extra for better services or aids. Depending on the situation, some students may require more intensive services, medical assistance, or advanced technology to benefit from an education. Schools may or may not offer these things; however, under IDEA, school districts must meet certain FAPE

standards in order to maintain proper funding, while also being able to properly direct parents to more appropriate schools within the district, or programs nearby.

A great example of schools testing the limits of an appropriate education is the *Sacramento City Unified School District Board of Education v. Holland* case. Rachel Holland was an 11-year-old girl with an intellectual disability. Although she had a low IQ of 44, she was a very social student with a desire to learn. After spending 1985-1989 in special education programs, her parents suggested placing her in a general education classroom. The district rejected this, claiming Rachel was “too severely disabled to benefit from full-time placement in a regular class,” (Bd. of educ., Sacramento city school d. v. Holland, 1992). The parents then requested a due process hearing. The courts ruled in favor of the Hollands, claiming the district failed to provide evidence that a general education classroom was not constructive for her. Today, professionals can determine if a regular classroom is beneficial to a student with a disability by using the Rachel H. Four-Factor Test. This relates to FAPE (and even LRE) because the setting in which Rachel’s parents favored was very appropriate for her. In a general education classroom, she would be able to get the same education as her peers, while also gaining non-academic skills that could greatly benefit her in the future.

Prior to an IEP, schools must provide unbiased, nondiscriminatory evaluations to students to determine whether or not an IEP is needed. This pillar is very important because it has to be designed in order to avoid misidentification. Simply put, “The evaluation must be individualized and conducted in all areas related to the suspected disability,” (Yell, p. 207, 2016). Assessing a student for disabilities requires test conductors to only receive information based on questionable aspects of the student, whether it is cognitive or non-academic. If a student is being tested for the wrong reasons, an IEP team may accidentally provide him or her with unreasonable services (or

worse, disregard important complications). Evaluations determine constructive strategies, services and instructional plans that will provide a fair education to a student. Large amounts of data and work samples, in addition to various forms of assessing, ultimately decide if a student has a learning disability, and therefore needs to be performed by a professional team.

IDEA mandates that students with disabilities be provided with a least restrictive environment in a public school setting, otherwise called LRE. According to Yell (2016), “The LRE mandate ensures that schools educate students with disabilities in integrated settings, alongside students without disabilities, to the maximum extent appropriate,” (p. 243). In order to decide on the best placement for a student, the IEP team will go through a continuum of placement process. Placement is based on how well educational services will be implemented in a setting. These services consist of speech therapy, occupational therapy, counseling, and anything that is educationally beneficial. Starting from the least restricted environment, the team will go down a list of possible placements until a constructed choice is made. In addition to a proper setting, the student should always be provided with any supplementary aids necessary (i.e. instructional assistant, assistive technology, accommodations, etc.) that can help him or her achieve the same academic goals as the general education population. Because there are no set inclusion rules, LRE is just as likely as FAPE to be part of a special education IDEA-related case.

In the 1997 case, *Hartmann v. Loudoun County Board of Education*, clear LRE guidelines were created to ensure that inclusion is appropriately provided to students with special needs. Mark Hartmann was an 11-year-old student with Autism. School officials facilitated many services and accommodations to him (i.e. special education and speech classes; hiring an instructional aide), while also placing him in a general education class. Despite this effort,

Mark's violent behavior led to a suggestive 50/50 time in a special and general education class. Naturally, his parents refused. A due process hearing took place, and it ruled in favor of the school district, claiming, "...the LRE provision only created a presumption, and the presumption reflected congressional judgment that receipt of social benefits is a subordinate goal to receiving educational benefit," (Yell, p. 253, 2016). Because of this, The DeVries/Hartmann Three-Factor Test was created to explain when mainstreaming is not a requirement under IDEA.

IDEA is a strong supporter of parent involvement in special education. In fact, Yell (2016) states, "parents must be involved in evaluation, IEP meetings, and placement decisions," (p. 62). By including parents in the special education program, states are forming unique bonds between families and schools. Parent-teacher partnerships result in successful learning environments, which is great for IEP goals—school professionals and families need to be able to work together if they want to see individual students flourish cognitively, socially, and personally. "Co-teaching," so to speak, is what establishes achievement for a student with disabilities.

The last pillar to be mentioned is based on procedural safeguards. What this incorporates is the notion that parents and students involved in a special education service have full rights to obtaining records, providing permission on various occasions, and obtaining legal assistance in case disagreements emerge. According to The American Psychological Association, "when a parent feels that an IEP is inappropriate for their child, or that their child is not receiving needed services, they have the right under IDEA to challenge their child's treatment," (2016). IDEA firmly promotes a fair education for a child with a disability. Denying this would obstruct many IDEA guidelines, which is why procedural safeguards are enacted, and why they are important for families to know very well.

Federal involvement has surely impacted how programs provide educational services to anyone with special needs, therefore making programs more effective and reliable. For Indiana, Article 7 is the main guideline to special education rules affiliated with IDEA. It is here that school staff and parents can locate information on how to obtain special education services. Under both these articles, the Child Find mandate requires schools to locate and evaluate students who may be eligible for services, at no cost to families. The Identification and Evaluation section of Article 7 (2014) states, “the public agency shall establish, maintain, and implement written procedures that ensure the location, identification, and evaluation of all students...who are in need of special education services, regardless of the severity of their disabilities,” (p. 55). The reason for implementing this rule is to make sure that all students are receiving appropriate educational benefits, as defined by FAPE. If students are not serviced accordingly (especially those who have disabilities and have not been identified), the student is losing out on their rights to a fair education.

Early interventions are also a necessary step toward equal educational opportunities. As noted under Article 7, implementing assessments such as professional development and scientifically based instruction is free, wide-ranging tools that limit further delays in specific areas. According to Article 7, early intervening services are services “...provided to students...who are not currently eligible for special education or related services, but who need additional academic and behavioral support to succeed in a general education environment,” (Early intervening services defined, p. 7, 2014). A tool that can help schools gain insight on how all students are performing in their respected curriculums is response to intervention (RTI). With this platform, data is collected and used in many ways—all of which relate to spotting learning problems early on.

RTI is an educational and behavioral approach to collect data on student performance academically and/or behaviorally. According to Yell (2016), “the purpose of an RTI system, which combines evidence-based instruction and progress monitoring, is to increase the number of students who learn successfully before they are in need of special education services,” (p. 335). Through RTI, teachers can monitor progress and identify learning disabilities early on. A multi-tiered approach, consisting of three tiers (generally), is formatted to increase the intensity of intervention. Services are provided by general education and special education teachers, as well as any specialists students can benefit from seeing (i.e. reading specialist, intervention specialist). RTI is a great way for families to gain insight on their child’s performance in school, and if used correctly, can ensure schools are using adequate teaching strategies.

The process of RTI begins with a “team” of teachers who work collaboratively on an effective standard treatment. For the most part, this consists of general and special education teachers. The general educator’s duties consist of placement into tiers defined by the school, along with implementing a framework, collecting data, and collaborating with other educators on how to best service students on higher tiers. The special education teacher must determine if screenings are needed, and may come up with problem solving tools for students in upper tiers. Ehren, Lahster, and Watts-Taffe claim all educators in a team “...must have a common framework within which to work and communicate, including the same basic understanding of RTI and its essential processes,” (“Creating Shared Language for Collaboration in RTI,” n.d.). General and special education teachers, speech pathologists, site administrators, psychologists, and many more may also be involved in RTI, and must all have a complete definition of RTI and the roles everyone plays for a better use of everyone’s strengths.

Once roles of educators are set, the entire RTI plan can take place. According to Searle (2010), “Three levels of assessment drive the RTI process: universal screening, diagnostic assessment, and progress monitoring,” (“What Every School Leader Needs to Know About RTI”). These processes are implemented into various types of RTI, including standard protocol models and problem solving models. While both models incorporate similar processes, their differences lie in instructional decisions. Problem solving models require a team of educators in making numerous interventions for one or few students, depending on where the struggle lies. Standard protocol models, on the other hand, rely solely on the instructor to make placement decisions, while also providing one intervention for all students based on common, research-based areas of difficulty.

When a model is decided on, the tiers of RTI (and assessment levels) take effect. Under tier 1, classroom screening, instruction, and group interventions begin. Here, “...all students are screened on a periodic basis to establish an academic and behavioral baseline and to identify struggling learners who need additional support,” (“What is RTI?” 2016). Tier 1’s focus is to engage all students in the general education classroom by the general education teacher. Instruction takes place using a scientifically based approach in order for 80% of the student population to meet their needs.

When students need additional help, they are placed into tier 2. 15-20% of the student population is within this tier. These students, “...are provided with increasingly intensive instruction matched to their needs on the basis of levels of performance and rates of progress,” (“What is RTI?” 2016). Targeted interventions are generally provided in small groups by a specialist (i.e. special education teacher) either in the classroom or elsewhere. Once this tier is reached, a problem solving method occurs to discover the problem, find a resolution, implement

it, and analyze progress. Although this can be done for all models of RTI, it is more often used here. This specialized instruction is also scientifically based, and is given in addition to tier 1 instruction. Progress monitoring is done more frequently in hopes of finding some progression in students.

Lastly, tier 3 is used for 5% of the student population who are in need of an individualized, intensive intervention. When tiers 1 and 2 cannot provide appropriate assistance, students in this tier “...are then referred for a comprehensive evaluation and considered for eligibility for special education services under the Individuals with Disabilities Education Improvement Act of 2004,” (What is RTI? 2016). At this point, a student should hopefully obtain more suitable forms of instruction. Like tier 2, these students are assessed more than those in tier 1, and are given supplementary services in addition to tier 1 instruction. However, this sort of grouping is mainly one-on-one with a specialist in the field of the student’s difficulty. It must be noted that during any time in RTI, a student can always change tier positions depending on how interventions are working.

One implication regarding RTI is the inclusion of culturally and linguistically diverse (CLD) students. First, it is vital that teachers and administrators remain sensitive to differences amongst students—having an understanding will limit misdiagnoses in tier placement and referrals for special education services. According to Combes, Kea, and Montalvo (2014), “when teachers use culturally and linguistically responsive RTI pedagogical methodologies, many CLD students benefit from small group and individualized differentiated instruction,” (p. 207). In other words, teachers should question if these characteristics keep students from excelling—if additional support is all that is needed, many ideas can be used to ensure these student succeed (i.e. speaking students’ first language, including cultural activities in lessons, etc.). Combes et al.

(2014) also state, “critical to the success of...RTI is teacher and administrator buy-in, teacher participation in the decision-making process, and teacher training...” (p. 214). Appropriate monitoring and analyzing of data by effective educators will keep RTI from becoming an invalid tool for efficient instruction of CLD students.

While identifying students through RTI is useful, the evaluation process is what really determines if a student needs special education services. In accordance to IDEA, “All states must ensure that all students with disabilities, from birth to age 21, residing in the state who are in need of special education and related services or are suspected of having disabilities...are identified, located, and evaluated,” (Yell, p. 335, 2016). The evaluation process is an important step to see if a student is eligible for special education services, as well as determining strengths and weaknesses for the sake of planning an appropriate educational program.

Only two parties can request an evaluation: a school staff member who suspects a disability, and a parent. Parental consent is the most important factor in this process, as it is needed to go ahead with any assessing. If a parent is the first to request an evaluation, the school has 10 days to follow up on their written consent with an answer (along with a reason why a referral is granted/denied, how that answer came to be, and any further information regarding procedural safeguards). If an evaluation is granted, team members and the procedural process are also included in the follow up. Under Article 7’s Conducting an Initial Educational Evaluation section (2014), it states, “the educational evaluation must be conducted by a multidisciplinary team, which is a group of qualified professionals who conduct a student's educational evaluation with input from the student's parent,” (p. 61). These professionals must conduct a comprehensive evaluation solely based on the suspected disability. Evaluations must always be valid and reliable. Team members may include a licensed specialist or special education teacher

(to confirm disability), public agency representative (to establish available resources), or a school psychologist (to determine behavior or academic performances), among others.

An evaluation may take no longer than 50 days to complete prior to an initial case conference committee meeting with a student's parent(s); however, some exceptions apply. For a student not responding to RTI, or who has been removed for disciplinary reasons, 20 days is adequate. Other instances include transitioning to another school (varied timeline), transitioning to First Steps in public school (before age 3), or if a parent repeatedly fails to provide a student for evaluation (more than 50 days) (Conducting an Initial Educational Evaluation, 2014). Once the timeline is up, the members of the CCC and the student's parent agree upon a case conference date. Normally, a written notice is sent to the parent five days prior to said meeting.

The last step in the evaluation process occurs during the first case conference. Here, parents are given procedural safeguards, and informed as to whether their child is eligible for special education services. Established under Article 7, it claims, "when determining eligibility for special education and related services, the CCC must: consider all of the information contained in the educational evaluation report; and not rely on any single measure or assessment..." (Determination of Eligibility, p. 64, 2014). If an unbiased conclusion is made, an IEP is then created to begin the process of an accommodated (or modified) education. The role of the parents is very crucial at this point, since they are able to provide most of the background information on the student, and provide consent through signing of paperwork.

Parents are essential members in all special education affairs because they account for the approval of services, and can help with implementing the regulations behind any intervention programs. In order to avoid discrimination, IDEA and Article 7 have implemented very

informative laws to help schools and families understand the basic code of conduct for students with disabilities. As stated under Section 504, no student with a disability should be given a harsher punishment than a nondisabled student would be given under the same circumstances. With this in mind, it is necessary for schools to implement reasonable rules for all to follow. According to Yell (2016), "... when these regulations are developed, they must not violate constitutional principles," (p. 300). Rules must be clear, specific, and have reasonable penalties. In these ways, disciplinary actions are equal for both general and special education students, and do not infringe on students' Fourteenth Amendment rights to due process.

To ensure this disciplinary fairness, Article 7 declares, "a public agency is not required to provide services to a student with a disability...for violating a code of student conduct, if services are not provided to a nondisabled student who has been similarly removed," (Discipline Procedures, p. 106, 2014). In terms of disciplining, students in both general and special education are required to go through similar processes of correction. For example, in-school disciplinary procedures (i.e. time out, verbal warnings) may be used for all students, written notices of behaviors should be provided to parents, and every child should have the right to explain him or herself. For suspensions and expulsions, all students have the right to a written notice, to a hearing, and an appeal (for serious charges), among other things (Yell, 2016). In all, these are a few suitable examples for similarities between disciplining students in general and special education.

While all students are meant to follow the same basic regulations, students with disabilities must undergo a more specific process prior to a consequence. If a student portrays a mild form of negative behavior, a short-term removal may take place. In accordance to the 10-day rule, established by the *Honing v. Doe* (1988) case, students with disabilities may not miss

any more than 10 school days. Exceeding this will result in a continuation of services. Yell (2016) states, “the educational services provided to students must allow them to (a) progress in the general education curriculum, (b) receive special education and related services, and (c) advance toward achieving their IEP goals,” (p. 305). If an IEP team does not implement this, FAPE would be violated, and the school could be held liable for inappropriate education.

Long-term removals and expulsions are decisions that take a risk on violating IDEA and Article 7 laws if not determined correctly. Both qualify as a change of placement, and under the Disciplinary Change of Placement section of Article 7 (2014), this action will transpire if, “...the removal is for more than ten (10) consecutive instructional days, [or] the student is subjected to a series of removals that constitute a pattern...” (p. 106). An IEP team must only authorize a change of placement (long-term or expulsion-wise) if a manifestation determination allows it. In summary, this assessment would conclude if a behavior correlates with the student’s disability, or if an IEP was not conducted appropriately.

Article 7 asserts that a 10-day time frame is appropriate for an IEP team to determine a manifestation. It also states if there is no correlation, “...school personnel may apply the relevant disciplinary procedures to the student in the same manner and for the same duration as those procedures would be applied to students without disabilities,” (Manifestation Determinations, p. 108, 2014). On the other hand, if a behavior is linked to a disability, the student may return to his or her previous placement with no disciplinary action, a Functional Behavior Assessment (FBA) must be conducted, and a Behavior Intervention Plan (BIP) would either be edited or created. An FBA would determine the reason for a behavior, while a BIP would strategize how to fix it, under IEP guidelines.

Under Article 7, a student with a disability could be placed in an interim alternative educational setting (IAES) if severe behaviors occur. It states a public agent, "...may remove a student to an interim alternative educational setting for not more than forty-five (45) instructional days without regard to whether the behavior is determined to be a manifestation of the student's disability" (Manifestation Determinations, p. 109, 2016). Violence and possession of a weapon or drugs could immediately place a student under this form of discipline. Parental consent is not required in this matter—a unilateral decision by the public agency determines the outcome. However, IAES can constitute for short-term or long-term removals, depending on the behavior, and FAPE must be acknowledged under both circumstances. This setting should also provide access to the general education curriculum and foundations for IEP progress, as well as an FBA and BIP if necessary.

Procedural safeguards under Article 7 guarantee parents have the right to mediation, due process, reimbursement, and appeal (among other things) when any discipline measure takes place. After an action has taken place, procedural safeguards are provided to parents—although they are not required to consent to a removal, parents can make one of three options if they feel the need to object: request mediation, request a due process hearing, or request both. While it may be ideal to resolve complaints during a case conference, sometimes parents need mediation to settle differences. Mediation is defined as "a dispute-resolution and collaborative problem-solving process in which a trained impartial party facilitates a negotiation process between parties who have reached an impasse," (Yell, p. 269, 2016). This is a quicker, cheaper, and more positively engaging way to settle a disciplinary issue. If an issue here is not resolved, a parent's right to due process could ensue.

Article 7 contains many laws pertaining to due process. This lengthy and expensive procedure is protected by an abundance of safeguards to ensure that students will be given equal opportunities to an education. Upon the start of a case, both parties under IDEA law have the right to attorneys, to present evidence, to cross examine, and even to obtain a record of the hearing. For harsher disciplines, such as an IAES, the stay put rule must be enacted. Yell (2016) states that during a judicial hearing regarding complaints, "...unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement," (p. 273, 2016). In addition, this provision could be repealed if the student becomes a threat to him or herself, or others, no matter if a disability is linked to behavior—the student could then be court ordered to immediately change placement for up to 45 days. In the end, due process is meant to guarantee both parties abide by Article 7 regulations.

Maintaining equality on the topic of discipline is tough. While students with disabilities must be treated like any other student, it can be challenging to appropriately punish a behavior. Families have many opportunities to help correct undesired behaviors, as well as many opportunities to oppose a consequence (i.e. 1-2 years to complain, right to consent to FBA/BIP), but that does not mean parents will always prevail. Schools do not require consent to a removal, which could more than likely result in a complaint by a parent. These are just a few of many factors in which unilateral decisions lead to a plethora of outcomes, good or bad.

Federal and state mandates regarding special education are necessary to keep students with disabilities from being discriminated against in any school setting. Thanks to IDEA and Article 7 (not to mention ESEA, The Rehabilitation Act, The Americans with Disabilities Act, and many more), parents and guardians can be assured their child is provided with the most

appropriate education possible. It is important for all children to develop skills necessary to function in society, and students with disabilities are no exception.

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