



**PLACEMENT OF LEARNERS WITH DISABILITIES
IN THE LEAST RESTRICTIVE ENVIRONMENT
INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

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When a child is identified as having a disability and eligible for special education services, a school team develops an Individualized Education Program (IEP). This IEP contains components defined by law, including discussions and decisions about the kind of services the child needs, how much time will be spent providing those services, and where the child will receive those services. While the law, as described below, clearly communicates that the IEP team should plan special education services to be delivered in the school and class that the child would attend if they did not have a disability, it also allows for consideration of alternate places for service delivery, but *only if* those services cannot be provided in the general education classroom. The primary example provided by the US Department of Education and case law is when a child's behavior is such that the IEP cannot be implemented and there are concerns for harm to peers in the class. The IEP team is expected to consider all of the possibilities for providing specially designed instruction and supports in the general education class before considering removal from the opportunity to learn alongside peers without disabilities.

IEP teams, however, often make placement decisions based on the child's disability label, the intensity of the services, the need to modify the curriculum, the current configuration of services in a building or district, or the traditions for placement decision-making that were developed with a view to link a type of service with a separate place to receive it. Minutes of services are sometimes confused with minutes in, or removed from, the general education class, and the presence of a special educator is intended to signify the delivery of specially designed instruction. Special education, however, is the work that it takes to adapt the curriculum, develop specialized materials, and provide explicit and unique instruction to enable the child to participate and make progress in the general education standards, regardless of the intensity or type of disability that a child has. Some districts tie the opportunity to receive services in general education to a "co-teaching" model, or a non-neighborhood school where children with certain disabilities are congregated. Sometimes there is guidance that only allows children with disabilities to be in general education classes if it is a "co-taught" class, consequently placing unusually large numbers of students with disabilities in one class in a grade or subject, with teachers often stretched to meet the wide variety of unique learning needs and keep pace with providing instruction in grade level standards.

This paper is designed to highlight the legal requirements of the [Individuals with Disabilities Education Act](#) (IDEA) on the placement of children and youth with disabilities. The law was passed in 1975, and as last amended in 2004, refers to “regular” education settings rather than the commonly used term “general” education settings. For purposes of this paper, and in keeping with the language of the law, “regular” classes and schools will be used. All references in this paper are to the 2004 Amendments or, where applicable, to earlier versions of the Act and the regulations as passed by Congress (20 USC § 1400 *et seq.*) or the regulations adopted by the U.S. Department of Education to guide states in meeting the requirements of the law (34 C.F.R. § 300). The information about placement decision requirements is presented in the context of the law’s purpose.

Education for All Handicapped Children Act (EHA)

In 1975, when the [Education for All Handicapped Children Act](#) (P.L. 94-142) was passed, it included language inviting all states to apply for funding. To qualify for funding, states had to assure, among other things, that the goal of providing full educational opportunities to all children with disabilities includes “the provision of special services to enable such children to participate in regular educational programs” (20 U.S.C. § 1411). It is significant to note the original intent of the law, written 45 years ago, and how it has changed, or *not* changed, over time. The legislation incorporated major components or guarantees that continue through the most recent reauthorization of the Act, now known as the *Individuals with Disabilities Education Act* (IDEA), P.L. 108-446. Relevant requirements are described below.



A free appropriate public education (FAPE)

IDEA guarantees that each and every child, regardless of the severity of the disability, must be provided an education appropriate to their unique needs at no cost to the parent(s)/guardian(s), including related services and other services determined to be educationally necessary to benefit from special education (20 U.S.C. § 1412). Regulations for implementing EHA were published in 1977 and defined special education as: “specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction and instruction in hospitals and institutions” including speech pathology or any other related service and vocational education (34 C.F.R. § 300.39).

Among the purposes of IDEA in the 2004 reauthorization are: “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” (34 C.F.R. § 300.1).

Nondiscriminatory assessment

Prior to developing an IEP and determining placement, a child must be evaluated by a multidisciplinary team in all areas of suspected disability by tests that are not racially, culturally,

or linguistically biased. Multiple assessments, administered by trained personnel who are also competent in the area of the suspected disability are required. So, for example, a child with a suspected hearing impairment would need to be evaluated by someone with expertise not only in teaching a person with a hearing impairment, but with expertise in evaluating a person with a hearing impairment.

The purpose of the evaluation is initially to identify if the child has a disability, and subsequently:

- ◆ determine the child's current performance level,
- ◆ design special education and related services,
- ◆ select annual goals and identify the adaptations needed to meet them,
- ◆ define the supplementary aids and services needed *to enable participation in general education settings alongside nondisabled peers*, and
- ◆ determine the child's placement *beginning with the school class the child would attend if they did not have a disability*, or justify why a child needs to be removed to an alternate setting.

A single evaluation procedure is not permitted for either planning or placement purposes (U.S.C. § 1414(c)(1)(B)(ii – iv)).

✔ **An individualized education program (IEP)**

An IEP is designed by a team that includes the parents or guardian, the child's teachers (general education and special education), and a person representing the educational agency" (34 C.F.R. § 300.321). The IEP is developed for each child with a disability to describe the specially designed instruction to meet their unique needs that result from their disability. Among other requirements and determinations, the IEP includes: the present levels of academic and functional performance; annual goals and accompanying instructional objectives that are aligned with grade level standards; special educational services to be provided; the extent to which the child will participate in regular education classes; and the personnel who will implement special education and related services. On a quarterly basis, the IEP team reviews student progress on IEP goals and grade level curricula. On an annual basis, the team reviews and revises the IEP, considering how to narrow the performance gap and meet unique student learning and support needs. The family or the school may conduct IEP meetings between annual revisions to address any needs or concerns.

✔ **IEP Goals**

Under IDEA, IEP goals are designed by an IEP team to meet the child's needs that result from the disability for two reasons (34 C.F.R. § 300.320):

- ◆ to enable the child to be involved in and make progress in the general education curriculum, and
- ◆ to meet each of the child's other educational needs that result from the disability.

Special Education Services

Each IEP identifies the special education, related services, supplementary aids and services, the program modifications, and support for school personnel needed to enable the child to achieve their annual goals, make progress in the general education curriculum, *and be educated alongside children with and without disabilities*. Students with disabilities, even those who take alternate assessments based on alternate achievement standards, are explicitly expected to have IEP goals aligned with their grade level curricula. Each state must ensure that personnel are “appropriately and adequately prepared and trained, and have the content knowledge and skills to serve children with disabilities” (34 C.F.R. § 300.320(a)). Note: there is no reference to a “continuum of services” in IDEA. There is only the need to identify and describe the services the child will receive and who will deliver those services.

Parental participation

P.L. 94-142 mandated meaningful parent involvement. This legislation required that parents participate fully in the decision-making process that affects the child’s education. It is noteworthy that the 2004 regulations emphasize the role of parental participation as members of the IEP team, including in the decisions of goals, services, and placement of their child. Aside from informing and notifying parents of procedural actions (e.g., 34 C.F.R. § 300.322), teams are expected to strive to engage in positive and collaborative decisions regarding the education of a child with a disability.

Procedural due process

Parents or guardians have rights related to their child’s education and a way to hold schools accountable for their child’s special education. Parents have the right to: confidentiality of records, examine all records, obtain an independent evaluation, receive written prior notification of proposed changes to the child’s educational program or placement, and have an impartial hearing to make decisions whenever disagreements arise regarding educational plans for the child. Due process consists of the right to protest the IEP or implementation of the IEP with representation by legal counsel to the local education agency (LEA) or State Education Agency (SEA), and appeal to state or federal courts (20 U.S.C. § 1415).

The least restrictive environment (LRE)

This principle reflects the presumption that a child’s education takes place *in a general education setting with non-disabled peers* and “...assure[s] that, to the maximum extent appropriate, children with disabilities, ... are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with

the use of supplementary aids and services cannot be achieved satisfactorily” (20 U.S.C. § 1412(a)(5)(A)).

✔ Placement decisions

The starting point for all placement decisions begins with a consideration of how the child will participate in the same general education class(es) with their nondisabled peers in the school the student would attend if they did not have a disability. If the student will not participate in the general education setting or in nonacademic or extracurricular activities, the IEP team must offer an explanation, a justification of the extent to which such removals will occur and why it is necessary. The LRE requirements express a strong preference, although not a mandate, for educating children with disabilities in regular classes alongside their peers without disabilities. In selecting the educational environment, IEP teams *must consider any potential harmful effect on the child or on the quality of services* that they receive that might result from the change in placement. IDEA instructs that students with disabilities *should not be removed from regular classrooms solely because of the need for modifications to the general education curriculum.*

✔ Continuum of placements

While the original statute and subsequent reauthorizations did not specify the need for a continuum of placements, the regulations for implementing the law required each public agency to ensure that a continuum of alternative placements be made available, including instruction in “regular classes, special classes, special schools, home instruction, and instruction in hospitals,” and “make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement” (34 C.F.R. § 300.115). Comments from the U.S. Department of Education in the 2006 regulations state that:

“The Department has consistently maintained that a child with a disability should be educated *at a school as close to the child’s home possible*, unless the service identified in the child’s IEP requires a different location. Even though the Act does not mandate that a child with a disability be educated in the school he or she would normally attend if not disabled, ...the Act presumes that the *first placement option considered for each child with a disability is the regular classroom in the school that the child would attend if not disabled*, with the appropriate supplementary aids and services that could be provided to facilitate the child’s placement in the regular classroom setting must be considered. ... In all cases, *placement decisions must be individually determined* on the basis of each child’s abilities and needs, and each child’s IEP, and *not solely on factors such as category of disability, severity of disability, availability of special education and related*

services, configuration of the service delivery system, availability of space, or administrative convenience.” (emphasis added)

Assistance to States for the Education of Children with Disabilities (71 Fed.Reg. 46588 (Aug. 14, 2006)).

✔ **Nonacademic and extracurricular activities**

The regulations require each public agency to “provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities” (34 C.F.R. § 300.107). Each public agency “must ensure that each child with a disability has the supplementary aids and services determined by the child’s IEP Team to be appropriate and necessary for the child to participate in nonacademic settings” (34 C.F.R. § 300.117). This language reinforces the continued emphasis on the participation of children with disabilities with their nondisabled peers, not only in the classroom, but in all other aspects of school life.

✔ **Justification requirements**

In considering placement decisions, Turnbull and Turnbull (2000) note that the IEP team must include an explanation of the extent, if any, that the student will not participate in the regular education class and in other extracurricular or nonacademic activities available to other same age peers who do not have disabilities. If the team recommends time out of regular education settings, then this puts the burden on the IEP team to justify why a child’s program and placement will not be in a) the school they would attend if not disabled, b) the regular age-appropriate classroom, c) in nonacademic and extracurricular activities, and/or d) alongside peers without disabilities. The team is required to discuss what harmful effects, if any, the child might experience as a result of removal from the regular class and school [20 USC Sec. 1414 (d)(1)(A)(iv)]. Further, harmful effects to social relationships and social-emotional well-being are to be considered as well as the impact on academic learning and access to grade level curricula.

Amendments to the Education for All Handicapped Children Act: The Individuals with Disabilities Education Act

Since the law was passed in 1975, there is a preference in Congress and the U.S. Department of Education for children with disabilities to be served first and foremost *with their nondisabled peers in the school and class they would attend if not disabled*. This language remains a constant through all of the amendments to EHA. Those amendments with significant bearing on educating children with disabilities in regular education settings will be highlighted.

1990: P.L. 101-476

In 1990, the Congress reauthorized EHA (Public Law 101-476) and changed the title to the *Individuals with Disabilities Education Act (IDEA)*. It placed a focus on the individual child, added the disabilities of autism and traumatic brain injury to the list of those who could be served under the law, promoted research and technology development, and required secondary transition plans for learners with disabilities, starting at age 16.

1997: P.L. 105-17

In 1997, Congress enacted Public Law 105-17 to amend the special education law, with extensive direction in the regulations regarding the determination that a problem behavior is a “manifestation” of the disability, and subsequent placement considerations. The regulations also noted barriers to effective special education: the low expectations regarding the capacities of students with disabilities and local agencies’ “insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities” (20 U.S.C. § 1400(c)(4)). The solutions to overcome attitudinal and capacity barriers, included:

- ◆ Have high expectations for students.
- ◆ Ensure access to the general curriculum.
- ◆ Strengthen parents’ role.
- ◆ Coordinate IDEA with school improvement efforts.
- ◆ Redefine special education as a service rather than a place.
- ◆ Support high quality professional development for all personnel so that special education services can be delivered.
- ◆ Provide an incentive for whole-school approaches to address the learning needs of children with disabilities.

When proposing these regulations, the U.S. Department of Education noted:

“The new amendments enhance the participation of disabled children in the general curriculum through improvements to the IEP by (1) relating a child’s education to what nondisabled children are receiving; (2) providing for the participation of regular education teachers in developing, reviewing, and revising the IEP; and (3) requiring that the IEP team consider the specific needs of each child, as appropriate, such as the need for behavior interventions and assistive technology.”

Federal Register, Vol. 62 55028 (Oct. 22, 1997)

“Research data show that for most students with disabilities integration into general education programs with nondisabled children is often associated with improved results, higher levels of employment and independent living. The data also show that if disabled students are simply placed in general education classrooms without necessary supports and modifications they

are more likely to drop out of school than their nondisabled peers. The new amendments address this issue by requiring that the IEP include:

- (1) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class; and
- (2) A statement of the specific special education and related services and supplementary aids and services to be provided to the child or on behalf of the child, and a statement of program modifications or supports for school personnel that will be provided for the child.

Id., at 55028-29

The term *Supplementary Aids and Services*, while in the previous version of the law, had not been defined. The new law defined it as “aids, services, and other supports that are provided in regular education classes or other education related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with the LRE provisions in § 300.550– 300.556.” (Id., at 55033).

It is notable that, again, the emphasis is placed on services to be provided in regular classes with nondisabled peers. The rules recognized that “the services and placement needed by each child with a disability must be based on the child’s unique needs and may not be determined or limited based on the child’s disability category” (Id., at. 55035).

2004: PL 101-476

The latest reauthorization in 2004 (Public Law 108-446) increased the focus on accountability and improved outcomes for learners with disabilities. IEP planning teams must base the design of special education services on peer-reviewed research, ensure that progress is regularly monitored on IEP goals, and use a “Response to Intervention” approach that considers the response of children and youth to research-based interventions designed to address the areas of their learning needs. The LEA may:

- ◆ Provide positive behavior interventions and supports for learners with disabilities.
- ◆ Offer early intervening services to learners not classified under IDEA, but who need “additional academic and behavioral support to succeed in a general education environment [20 USC Sec. 1413 (f)]. Because these are not special education services, parental consent is not required under IDEA.

The 2004 amendments emphasize “academic and functional performance” connected to the general education curriculum. Indeed, the IEP must contain annual academic and functional goals to:

- ◆ meet the student’s needs that result from the disability to enable the student to be involved in and make progress in the general education curriculum,
- ◆ meet each of the child’s other educational needs that result from the disability, and
- ◆ include a description of how the student’s progress toward the annual goals will be measured.

Notably, a general educator must participate in IEP development and must also attend to the need for behavior supports and help the team determine the supplementary aids and services for the student to participate in the general education class.

The burden of proof is on the school district to explain the extent, if any, that a child will be segregated in placements away from nondisabled peers and the general education curriculum. The IEP team must consider each dimension of restrictive environments and justify separating the student from the regular class or nonacademic and extracurricular activities.

Case Law

In the United States legal system, due process hearings and district and federal lawsuits play an important role in interpreting IDEA and determining the implications of judicial decisions. These decisions become a type of law known as “Case Law.” Case Law results when courts are asked to resolve disputes between the family and the district or state education agency, and the court must interpret what the law means in a given situation. The results of that case law set a precedent, that is: a rule that is established in a previous court case influences future decisions, depending on which court issued the decision. Below are some of the cases that are important to special education law and the least restrictive environment requirement.



U.S. Supreme Court Cases

Brown v. Board of Education, 347 U. S. 483 (1954)

In this landmark civil rights decision, the U.S. Supreme Court determined that a separate education for African-American children was not an equal education, concluding that “in the field of public education the doctrine of ‘separate but equal’ has no place and that ‘separate educational facilities are inherently unequal.’” This decision provided parents of children with disabilities and disability rights activists the constitutional foundation to press for equal educational opportunities for all children, including those with disabilities.

Honig v. Doe, 484 U.S. 305 (1988)

The Court addressed the IDEA’s “stay put” provision, explaining that in enacting “stay put,” Congress intended “to strip schools of the unilateral authority they had traditionally employed to exclude disabled students ... from school.” The Court also noted that the IEP is the “centerpiece of the [IDEA’s] education delivery system” and explained that “Congress repeatedly emphasized throughout the Act the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness.”



Circuit Court and U.S. Court of Appeals Decisions

Roncker v. Walter (1983)

The Sixth Circuit Court was first to address educational placements and the “least restrictive” requirement. In *Roncker v. Walter*, 700 F.2d 1058 (6th Cir. 1983), the court developed a two-part test to guide the appropriate placement for a student with a disability:

1. *Could the educational services provided in the segregated setting be feasibly provided in a nonsegregated setting? (If so, the segregated placement is inappropriate.)*
2. *Is the student being mainstreamed to the maximum extent appropriate?*

This is commonly referred to as the “portability” doctrine that separates services from setting. A few years later, another federal court relied on the *Roncker* decision in developing a two-part test for meeting the LRE requirement.

Daniel R.R. v. State Board of Education (1989)

In *Daniel R.R. v. State Board of Education*, 874 F.2d 1036 (5th Cir. 1989), parents appealed a hearing decision which placed their six-year-old son in a special education classroom. The Fifth Circuit Court declined to follow the *Roncker* test and developed its own approach, asking the following questions:

1. *Can education in the general education classroom be achieved satisfactorily with the use of supplementary aids and services and with modifications?*
 - a. *Have attempts been made to make accommodations and modifications to the general education program, and to provide supplementary aids and services in the general education class?*
 - b. *Will the student receive educational benefit from general education?*
 - c. *Will the student’s overall educational experience in general education provide other benefits (e., language models), consequently justifying the general education placement?*
 - d. *What effect does the student’s presence have on the regular education environment that other students are receiving?*

The *Daniel R.R.* Court went on to say that *if a student’s education cannot be achieved satisfactorily, the next question is:*

2. *Has the district integrated/included the student to the maximum extent appropriate? Noting that the statute does not contemplate an all or nothing approach, i.e., either all regular or all special education placement, a student might be appropriately placed in some*

regular and some special education academic classes or special education academic classes and regular nonacademic classes.

Greer v. Rome (1991)

The continuum of placements concepts was also emphasized in the case of *Greer v. Rome*, (950 F.2d 688 (11th Cir.. 1991), where parents of a child with an intellectual disability disagreed with a team recommendation to place her in a self-contained kindergarten classroom. The Eleventh Circuit determined that *the school had failed to consider less restrictive settings prior to placing the student in a self-contained classroom*. The court concluded that IDEA requires an IEP team to at least consider, discuss, and justify why they would recommend not placing a student in the general education classroom, and, only then, to systematically move to less restrictive placement options.

Oberti v. Clementon (1993)

The term “inclusion” replaced the term “mainstreaming” in the case of *Oberti v. Clementon*, (995 F.2d 1204 (3rd Cir. 1993). Rafael Oberti was an eight-year-old child with Down syndrome whose behavior was alleged to disrupt the classroom and therefore required a self-contained special education class located outside of the school district. Rafael's parents wanted him to be included in his neighborhood school. In this case, the Court adopted a two-part test to determine whether he had been placed in the least restrictive environment.

1. It must first be determined whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily. In making this determination, courts should consider several factors, including:
 - ◆ whether the school district has made reasonable efforts to accommodate the child in a regular classroom;
 - ◆ the educational benefits available to the child in a regular class, with appropriate supplementary aids and services, as compared to the benefits provided in a special education class; and
 - ◆ the possible negative effects of the inclusion of the child on the education of the other students in the class

2. If placement outside the regular classroom is necessary, then it must be determined whether the child is included to the maximum extent appropriate, i.e., *whether efforts have been made to include the child in school programs with non-disabled children whenever possible*. This case established that if placement outside the classroom is necessary, the school district must then include the child in as many school programs with children who do not have disabilities “to the maximum extent appropriate.”

The court noted that when a child with disabilities learns differently from their nondisabled peers within a regular classroom, this does not justify exclusion from that environment.

Sacramento v. Rachel H. (1994)

In *Sacramento v. Rachel H* (14 F.3d 1398 (9th Cir. 1994), the parents of Rachel Holland, a third-grade student with intellectual disabilities, argued that with appropriate supplementary aids and services, she could be educated in the general classroom. The school district proposed that Rachel be placed in special education for academic subjects, and attend the general education class only for nonacademic activities. The Ninth Circuit ruled that, in determining the appropriate placement, schools must take into consideration four factors:

1. The **educational benefits of inclusive settings** versus segregated settings. The court found that the educational benefits of the regular classroom outweighed removal; Rachel was a “full member” of the regular class, participated in all activities with peers, and was making progress on her IEP goals. The court also noted that even if the special class placement is superior academically to the regular class placement, IDEA does not require the “best academic setting” for the student, only an “appropriate” one.
2. **Nonacademic benefits** (primarily social interaction with non-disabled peers). The court noted that Rachel had developed social and communication skills as well as self-confidence from placement in a regular class. Improved self-esteem and motivation through participation in general education classes must be considered in determining placement.
3. **The effect on the teacher and the peers**. The court looked at whether the presence of the child was disruptive or distracting and consequently would take up so much of the teacher’s time that other students would suffer from lack of attention. The court noted that a student who “merely requires more teacher attention than most students is not likely to be so disruptive as to significantly impair the education of other children.” The “disruptive” factor weighs against general education placement only if, after taking all reasonable steps to reduce the burden to the teacher, the other children in the class will not be deprived of their share of the teacher’s attention.
4. **The cost** of services that would be required for a student to stay in an inclusive setting. The district did not meet its burden of proving that the regular class placement would burden the district’s funds adversely.

T.R. v. Kingwood Township (2000)

In this third Circuit case, the Court clarified that the Least Restrictive Environment (LRE) is the one that, to the greatest extent possible, satisfactorily educates the disabled child with non-disabled children, in the same school the child would attend if the child were not disabled. T.R. involved a preschool aged child who was offered placement in an in-district classroom where half the children were disabled and half were typically developing, which the Court held was a “hybrid” program and therefore not the LRE.

Federal Policy Letters and Guidance

The Office of Special Education Programs (OSEP) in the U. S. Department of Education regularly issues Policy Letters and Dear Colleague Letters (DCL) to clarify legal requirements and provide guidance on systemic issues. Policy letters or guidance related to the placement of students with disabilities and removal from educational settings available to all other children have been issued in the last twenty years:

- ✔ **LRE and Inclusion.** In 1994, Judith Heumann, Assistant Secretary of the Office of Special Education and Rehabilitative Services (OSERS) and Thomas Hehir, Director of the Office of Special Education Programs (OSEP) issued a memo on the relationship of the LRE requirements to inclusion. Noting that the term “inclusion” is not mentioned in IDEA, they emphasized the need for “individualized inquiry into the unique educational needs of each disabled student in determining the possible range of aids and supports that are needed to facilitate the student’s placement in the regular educational environment before a more restrictive placement is considered.” Specifically, they noted that **placement decisions based solely on the following factors are prohibited:** “category of disability,” “severity of disability,” “configuration of delivery system,” “availability of educational or related services,” “availability of space,” or “administrative convenience” (OSEP Memorandum 95-9, November 23, 1994).
- ✔ **General Education Curriculum and IEPs.** On November 16, 2015, Michael Yudin, Assistant Secretary of OSERS and Melody Musgrove, Director of OSEP issued a Dear Colleague Letter (DCL) that clarified the interpretation of “general education curriculum” for students with IEPs. OSEP emphasized that the IEP is intended to support instruction and access to the general education curriculum rather than to create an alternate curriculum. Recognizing that some children with significant cognitive disabilities perform significantly below their grade level, the letter guides IEP teams to select goals that are aligned with, and are pre-requisite for, grade level standards, and estimate the extent of growth expected over the course of a year. The purpose of the DCL was to “ensure that annual IEP goals for these children reflect high expectations and are based on the state’s content standards for the grade in which a child is enrolled” (OSERS Policy Guidance on Free Appropriate Public Education (FAPE), November 16, 2015).
- ✔ **Individualized Determinations.** On Dec. 7, 2017, the U. S. Department of Education issued *Questions and Answers on U. S. Supreme Court Case Decision* related to the U. S. Supreme Court Case Decision related to *Endrew F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017). On page 8, the Q&A paper instructs: “Consistent with the decision in *Endrew F*, the Department continues to recognize that it is essential to make individualized determinations about what constitutes appropriate instruction and services for each child with a disability and the placement in which that instruction and those services can be provided to the child. There is no

“one-size-fits-all” approach to educating children with disabilities. Rather, placement decisions must be individualized and made consistent with a child’s IEP.”

Neighborhood School Placement Determination

The IDEA regulations require that the placement for a child with a disability should be “as close as possible to the child’s home school” [(34 C.F.R. § 300.52(b)(3), and that unless the IEP requires “some other arrangement,” the child with a disability should be “educated in the school that he or she would attend if nondisabled.” IDEA does not use the term or otherwise define “inclusion,” but it does require school districts to engage in an “individualized inquiry into the unique educational needs of each disabled student in determining the possible range of aids and supports that are needed to facilitate the student’s placement in the regular educational environment before a more restrictive placement is considered” (OSEP Memorandum 95-9, November 23, 1994).

However, comments in the regulations state that if a public agency “has two or more equally appropriate locations that meet the child’s special education and related service needs, school administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group [IEP team which includes the parent] determining placement” (Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46588). Parents may not want their child to attend a non-neighborhood school, even if the services are the same and considered to be equal. Considering IDEA language, case law, and guidance from the U.S. Department of Education, key questions in the argument for neighborhood school placement are:

- **Proximity:** is the recommended school further from the child’s home than the neighborhood school?
- **Unique needs resulting from the disability:** What needs will be met in the recommended school that cannot be met in the neighborhood school with special education and related services? What needs (academic, social, behavioral, or other) can only be met in the neighborhood school and are not available in the alternate school?
- **Academic and non-academic benefit:** Can the student benefit academically and nonacademically by learning and socializing with neighborhood friends and nondisabled peers in the neighborhood?
- **Rationale of the public agency:** Is the decision to place a child in a non-neighborhood school based solely on any of the following factors "category of disability," "severity of disability," "configuration of delivery system," "availability of educational or related services," "availability of space," or "administrative convenience?"
- **Potential harmful effects:** Will there be any harmful effects for the student if they attend or do not attend their neighborhood school?

Unless there is a danger to others, safety considerations for the student, privacy and confidentiality concerns, or the need for specific instruction that is impossible to deliver in a general education setting, a child's special education services should be delivered in the context of the general education class and instruction provided to all other children in the age-appropriate grade of the neighborhood school or the school the child would attend if they did not have a disability.

Call to Action

Why are schools making placement decisions that do not comply with the letter or intent of the law? Knowledge, skill, fear of change, organization of school personnel, tradition in scheduling and decision-making, limited use of data, deficit-based thinking, and lack of collaborative structures and time are keeping our schools' delivery of special education services functioning with a model that does not keep pace with legal requirements and with current practices defined in the literature.

To be clear: placement in general education does not equate to "inclusion." Placement is just the starting point; a child with a disability cannot be included if they are not "IN" the general education setting. MCIE and others have long recognized that inclusion requires a sense of belonging on the part of the individual as they are valued for their unique contributions as well as shared interests by members of the larger school community. Our colleagues in New Hampshire (Cheryl Jorgenson, Michael McSheehan, and Rae Sonnenmeier) present a framework for inclusion that nests meaningful participation in membership with both as foundations for learning and academic outcomes (Jorgensen, McSheehan, & Sonnemeier, 2010). Their work, originally published in 2009, has served many schools and districts in the U.S. as they develop a vision for inclusion that is not based solely on location, but requires intentional effort to promote membership, participation, and learning.

MEMBERSHIP and a SENSE OF BELONGING: Students with a sense of belonging in school feel socially connected, supported, and respected. They trust their teachers and their peers, and they feel like they fit in at school. They are not worried about being treated as a stereotype and are confident that they are seen as a person of value. They demonstrate fewer behavior problems, achieve more academically, build positive social relationships, are more likely to be motivated to engage in school activities, (Walton & Cohen, 2011) and are more likely to find meaning in life (Lambert, Stillman, Hicks, Kamble, Baumeister, & Fincham, 2013). The emotional consequences of a sense of belonging have been associated with increased happiness, reduced stress, and higher motivation to succeed (Lambert, et al., 2013).

ENGAGEMENT and MEANINGFUL PARTICIPATION

Engagement can be defined as the extent to which students identify with, and value, schooling outcomes, and participate in academic and non-academic school activities (Wilms, 2000). It is considered to be the behavioral component of participation, accompanying the psychological component of a sense of belonging. Extensive global research conducted by *The OECD Programme for*

International Student Assessment found that a sense of belonging and participation in school had a moderately strong relationship: students with high average levels of sense of belonging also tended to have high average levels of attendance and participation in school. Consequently, meaningful participation was also positively related to measures of literacy performance. To be “meaningful,” teachers will want to encourage engagement and participation that moves from passive to active roles in all school activities, and even further to giving student voice and contributions to class and school decisions.

LEARNING AND CONTRIBUTING

Encouraging student voice and recognizing each and every student as a valued class member enables the teacher to make personal connections. “If we want to design schools that promote student learning, one underlying principle is critical: relationships are essential for learning” (Leadbeater, 2008). Positive teacher-student connections can help children develop self-regulation skills, particularly autonomy and self-determination; and they are more likely to develop socially appropriate behavior (Varga, (2017). Finally, it is notable that research into the impact of placement on learning over the last 40 years shows unequivocally that learning in general education classes results in far greater academic and non-academic outcomes during the school years as well as after leaving public education (see list below).

The following actions can make a difference:

1. **Personnel Preparation:** Undergraduate and graduate coursework for general AND special educators must include:
 - ✔ Collaborative processes for adapting general education lessons for a variety of learners, including those with “invisible” neurological disabilities (e.g., auditory processing, reading or math learning disabilities, executive function disorders, etc.) as well as intellectual and developmental disabilities and autism.
 - ✔ Universal Design for Learning (UDL) within a multi-tiered system of supports (MTSS) that is designed to address learning needs, including:
 - Use of assessment data for instructional and intervention decisions,
 - Evidence-based instruction and intervention, and
 - Positive behavior supports with classroom rituals and routines for learning.

2. **District Policy, Practice, and Guidance:** District leadership and support staff should work to combine their equity and inclusive education focus, seek to understand the research and practices that support positive outcomes for learners through inclusive education, and develop professional learning options to promote the dispositions and practices in educators and other support service staff. These may include:
 - ✔ Professional learning that is strategically designed and delivered, based on identified staff needs, addressing content such as: co-teaching, collaborative planning, universal design for learning, differentiation, adapting lessons, positive behavior

supports, and effective evidence-based practices such as video modeling, peer-assisted learning, explicit instruction, etc.

- ✔ Review and strengthen MTSS practices.
- ✔ Use disaggregated district data to establish priorities to mitigate exclusive practices and disproportionate access and outcomes by various student groups.
- ✔ Examine and revise policies and guidance that restricts who can deliver specially designed instruction, and clarifies the roles and relationships among educators in a school building.
- ✔ Assist district-level leaders and support staff to envision and articulate the HOW, WHAT, and WHY of inclusive education.
- ✔ Develop communication strategies with families and other community members to share definitions, gain feedback, and conduct educational forums for community-wide shared understanding.

3. School Leadership: School leaders are often called upon to set the vision for the school as a functioning organization and support staff to achieve that vision. A vision for an inclusive school requires that the leadership engage in the exploratory work to fully understand what research tells us, and what the literature describes as successful methods to include all learners. Leaders need to:

- ✔ Be able to articulate WHAT, WHY, and HOW to include all learners as valued members of the school community.
- ✔ Engage staff in discussions to help shift their mindset about where students with disabilities “belong” and what it takes to be inclusive.
- ✔ Distribute leadership to teachers and staff to encourage voice and ownership of school policies and practices.
- ✔ Use disaggregated data to identify who is and is not “included” based on:
 - Attendance
 - Suspensions
 - Instruction provided outside of the general education setting in alternate classes or schools
 - Focus groups and surveys
- ✔ Develop strategies with staff members to address disparities and disproportionality in access or outcomes.
- ✔ Assign and schedule students with disabilities and need for enrichment in natural proportions across grades and/or subjects.
- ✔ Support staff in changing roles and responsibilities where accountability for “all” students is shared and collaboration is expected.
- ✔ Develop a master schedule that allows for common planning time during the school day for those teachers who need it.

- ✔ Clarify and support paraprofessional skill and engagement as support to the class, with “fade” plans to provide students with increased independence and natural supports from peers and others.
- ✔ Work with families who have children with extensive support needs who live in the school community to develop individualized participation plans for learning in the general education class and engaging in other school activities.

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