LRE: The Intersection of Research and Law

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LEARNING TOGETHER TO LIVE TOGETHER

1. 20 U.S.C. 1400 et seq.
2. 34 C.F.R. Part 300
3. 1975 Education of All Handicapped Children Act
4. 1990 renamed IDEA
5. 1997 Amendments to IDEA
6. 2004 Amendments to IDEA

MARYLAND COALITION FOR INCLUSIVE EDUCATION

Individuals with Disabilities Education Act (IDEA)

- Right to Free Appropriate Public Education (FAPE)
- Right to an Education in the Least Restrictive Environment

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Parental Rights
Substantive Due Process Rights

- Right to Free Appropriate Public Education (FAPE)
- Right to an Education in the Least Restrictive Environment
LRE: Negative Rights?

LRE obligations are typically seen as a form of negative rights. A person has a right to be free from intrusion or control. (Olmstead v. L.C.; Youngberg v. Romero)

Mark Weber, The Least Restrictive Environment Obligation as an Entitlement to Educational Services, 5 UC Davis J. Juv. L. & Pol’y 147, 2001

The IDEA and LRE

A different obligation. An assertion of positive entitlement.

Least Restrictive Environment (LRE)

34 C.F.R. §300.114

Each public agency shall ensure that to the maximum extent appropriate students with disabilities are educated with students who are not disabled.
Each public agency shall ensure that special classes, separate schooling or other removal of students with disabilities occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

When a court asks if a SD has provided all the necessary services that would make separate schooling or other removal unnecessary.

Each public agency shall ensure that a continuum of alternative placements is available to meet needs of students

Includes instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions
The continuum of alternative placements must make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular classroom placement.

**Placement Considerations**

34 C.F.R. §300.116

The IDEA requires that placement teams consider the following:

1. The effect of the student’s disability on his or her involvement in the general curriculum.

2. Provision of services (special education, related services, and supplementary aids and services) so that the student may be involved in and progress in the general curriculum.
3. The continuum of placement options must be considered, including the provision of such supplementary aides and services as resource room or itinerant instruction provided in conjunction with a regular placement.

34 C.F.R §300.116

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Placement Considerations
cont’d

4. The consideration of the continuum starts with placement in regular classes with supplementary aids and services in the school the student would attend if he or she did not have a disability.

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Placement Considerations
cont’d

5. The consideration of any potential harmful effect that the placement being considered would have on the student or the quality of services to be provided.

34 C.F.R §300.116

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6. The student cannot be removed from the regular education environment based solely on the student’s need for modifications of the general curriculum.

34 C.F.R §300.116

Placement Considerations cont’d

7. The student must be permitted to participate with typical peers in nonacademic and extracurricular activities, to the extent appropriate, including meals, recess, athletics, recreational activities, special interest groups of clubs sponsored by the school.

34 C.F.R §300.117 See also 34 C.F.R §300.107

Placement Considerations cont’d

8. The team must explain in writing in the IEP the degree to which the student will not participate with typical peers.
Supplementary Aids and Services

- 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 possible.

Supplementary Aids and Services cont’d

- Designed to help students with disabilities obtain three benefits from education:
  1. To advance appropriately in attaining IEP goals
  2. To be involved in and to progress in the general curriculum and to participate in extracurricular and non-academic activities.
  3. To be educated and participate with other students with disabilities and those without disabilities.

Supplementary Aids and Services cont’d

- Teams should consider the full range of supplementary aids and services.
- The regular education teacher is to assist the IEP team in determining the supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student.
Permissive Use of Funds
- Federal funds provided pursuant to the IDEA for special education and related services and supplementary aids and services provided in a regular education class to a student with a disability may benefit one or more students without disabilities.

Categories of Supplementary Aids and Services

- Environmental/physical
  - Providing preferential seating
  - Altering physical arrangement of classroom
  - Reducing distractions
  - Providing quiet corner or study carrel
  - Modifying equipment, adapting writing utensils
  - Assistance in maintaining uncluttered space
  - Providing space for movement/breaks

- Instructional
  - Teaching to learning style
  - Modifying materials
  - Providing resource room instruction
  - Varying method of instruction/content of lesson
  - Providing alternative assignments
  - Providing notes or study sheets
  - Providing books on tape
Staff Supports
- enhanced staffing
- one-to-one aide
- co-teaching arrangement
- staff development or training
- planning time

Social/Behavioral Supports
- Immediate feedback
- Rest breaks
- Behavioral intervention strategies
- Positive behavior supports plan
- Varied reinforcement system
- Circle of friends
- Peer buddies
- Counseling

Social/Behavioral Supports cont’d
- study skills instruction
- visual daily schedule
- Checklists
- notice or warning before change in activities
- daily check-in with case manager/mentor
- verbal/visual cues regarding transitions, directions staying on task
Free and Appropriate Public Education (FAPE)
34 C.F.R. §300.101

- Special Education and Related Services
- Provided at public expense
- To meet the unique needs of student so that student can:
  - Benefit from education
  - Progress in general curriculum

Program vs. Service

- Look at definition of Specially Designed Instruction

Special Education
34 C.F.R. §300.39(a)

>specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability"
Specially designed instruction means *adapting*, as appropriate to the needs of an eligible child … the content, methodology, or delivery of instruction to address the unique needs of this child that result from that child’s disability and to ensure access of the child to the general curriculum so that he or she can meet the educational standards … that apply to all children."

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Making a Placement Decision in the LRE

- Substantive due process right
- Procedural due process right
- Required since Act’s inception

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Individualized Determination

- Made by a team that includes parents
- Based on IEP, NOT on
  - Category or significance of disability
  - Availability of services
  - Configuration of service delivery system
  - Availability of space
  - Administrative convenience
**Individualized Determination cont’d**

- In conformity with LRE provisions
- Is as close as possible to student’s home
- Unless the IEP of the student requires some other arrangement, the student is educated in the school he or she would attend if not disabled (i.e. neighborhood or zoned school).

**Sequential Determination cont’d**

- Begin with presumed placement in regular education classes in the school the student would attend if not disabled:
  
  "Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled."

  34 C.F.R. §300.116

- IEP cannot be implemented in the least restrictive placement, then before moving on to a more restrictive setting, consider the full range of supplementary aids and services in the LRE.
Based upon peer-reviewed research to the extent practicable to be provided to the child.

- Resource rooms provide primarily whole group reading instruction with little differentiated materials (Vaughn, Moody, & Schumm, 1998)
- Few differences in instructional methods across self-contained classes for students with various disabilities (Algozzine, Morsink, & Algozzine, 1988)
- More instructional time and 1:1 in general classrooms (Sontag, 1997; Logan & Keefe, 1997; Hollowood, et al., 1995)
- IEP-specified peer interactions were not implemented in segregated settings (Gelzheiser, McLane, Pruzek, & Meyers, 1998)
- Placement & labeling lowered teachers' perceptions of students' efficacy (Raudenbush, Rowan, & Cheong, 1992)

Educational Research

Efficacy of Segregated Settings
What are inclusive education services?

Characteristics?

- Placement in natural typical settings
- Age appropriate general education classes;
- Natural proportions;
- In schools they would attend if not for disability;
- For most or all of school day and daily;
- For instructional and non-instructional purposes.

Six Characteristics

- All students together for instruction and learning.
- Supports and modifications within general education to meet appropriate learner outcomes.
- Accommodations occur so that students can access general education curriculum in general education classrooms.
Six Characteristics cont’d

- Equal membership and acceptance.
- Collaborative integrated services by education teams.
- Ryndak, Jackson and Billingsley (2000)

Research

- Over 20 years of research has consistently demonstrated that the inclusion of students with disabilities in general education classrooms results in favorable outcomes. These studies involve both students with high incidence disabilities (learning disabilities and other “mild” disabilities) and those with low incidence disabilities (severe, intellectual, and multiple disabilities).

Placement Matters

- Studies investigating the effects of placement in general education classrooms reveal positive outcomes in the areas of IEP quality, time of engagement, and individualized supports.
Significant increases in IEP quality on measures of age-appropriateness, functionality, and generalization were found when students moved into general education classes from special education settings even though the special educator remained the same (Hunt & Farron-Davis, 1992).


Within the general education classroom, there was an increase in the amount of instruction on functional activities as well as basic academic skills such as literacy for students with severe disabilities.

(Hunt, Farron-Davis, Beckstead, Curtis, & Goetz, 1994).
In addition, students were observed to be less engaged and often more alone in self-contained classrooms.

Cite:


Similar student engagement outcomes were reported in a study involving nine elementary students with severe disabilities who were observed in both special and general education settings.
General education classrooms delivered more instruction, provided a comparable amount of 1:1 instruction time, addressed content more, and used non-disabled peers more and adults less (Helmstetter, Curry, Brennan, & Sampson-Saul, 1998).


Compare

the two settings revealed a significant difference in non-instructional time.
Compare

➢ In self-contained classes, 58% of the time was classified as non-instructional versus 35% of the time in general education classes.

Individualizing Supports

Students with low incidence v. typical students

Results

➢ The students with severe disabilities were 13 times more likely than their peers without disabilities to receive instruction directed exclusively toward them during whole class activities, and were 23 times more likely to receive 1:1 instruction

➢ (McDonnell, Thorson, & McQuivey, 2000)
This challenges the prevalent notion that students with disabilities cannot receive individualized supports in general education classrooms.

Cite:


Outcomes for Students with Disabilities

Most of the research studies examining educational outcomes have found positive effects from inclusive placements.

Results

- This two-year study found that 41.7% of students with learning disabilities made progress in math compared to 34% in traditional settings.
- When comparing progress with their typical peers, 43.3% of students with disabilities made comparable or greater progress in math in inclusive settings versus 35.9% in traditional settings.

Reading

- Gains in reading were comparable in both settings.
Not all academic

- The National Longitudinal Transition Study examined the outcomes of 11,000 students with a range of disabilities

- found that more time spent in a general education classroom was positively correlated with
  - a) fewer absences from school
  - b) fewer referrals for disruptive behavior
  - c) better outcomes after high school in the areas of employment and independent living

In this domain of social outcomes, Fisher and Meyer (2002) conducted a two-year longitudinal study to examine the issue of social competence for 40 students with severe disabilities in inclusive and self-contained classrooms.

Students in the inclusive settings had significantly higher mean scores on the ASC (Assessment of Social Competence) after a two-year period, and although students in self-contained classrooms made gains, they were not statistically significant.

Falvey (2004) notes that “no studies conducted since the late 1970’s have shown an academic advantage for students with intellectual and other developmental disabilities educated in separate settings.”
Cite:

Effect on typical peers

- Concerns are often raised about the impact that students with disabilities, especially those with challenging behavior, have on the learning of typical students.

- Presence of students with disabilities results in greater number of typical students making reading and math progress compared to non-inclusive general education classes.
Further evidence for the positive effects of inclusion on students without disabilities is reported by McGregor and Vogesberg (1998).

Inclusion does not compromise general education students’ outcomes.

The presence of students with disabilities in general education classrooms leads to new learning opportunities for typical students.

Cite:

Brown v. Board of Education

- The concept of universal education was recognized in 1954
- The Supreme Court ruled: 
  
  *Separate education is not equal education*

Early Litigation

- PARC v. Commonwealth of Pa. 1971
  - Landmark case; 14th Amendment; Access to public education
- Wyatt v. Stickney 1972
  - 14th Amendment; Least restrictive alternative; all children must receive an education
- Mills v. Board of Ed 1972
  - Education required regardless of disability

Court Decisions

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Roncker v. Walter

- Portability/feasibility test
- Ronker v. Walter, 700 F.2d 1058 (6th Cir. 1983)

The Roncker court stated:
In a case where the segregated facility is considered superior, the court should determine whether the services that make that placement superior could be feasibly provided in a non-segregated setting. If they can, placement in the segregated facility would be inappropriate under the Act. Id. at 1063.

Roncker stands for the proposition that special education services rendered in self-contained settings are portable—services that can be brought to the child rather than removing the child from an integrated setting in order to receive the services. Along with the “portability of services” doctrine comes the necessary separation between services and the setting in which those services are delivered.[1]
Daniel R.R.


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Factors: Daniel R.R.

- whether a student will receive educational benefit from mainstreaming;

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Daniel R.R.

- whether any marginal benefit derived from mainstreaming is outweighed by the benefits likely to be received in a separate facility;

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And whether the student is a disruptive force in the classroom.

Application of Daniel R.R.

*Oberti v. Board of Education*, 999 F.2d 1204 (3rd Cir. 1994)
*Greer v. Rome City Sch. Dist.*, 950 F. 2d 688 (11th Cir. 1991)

Rachel H. Balancing Test

*Sacramento School District v. Rachel H.*, 14 F. 3d 1398 (9th Cir. 1994).
Outlined 4 factors:

- Educational benefits available in the general education classroom with supplementary aids and services;
- The non academic benefits of interacting with peers without disabilities;
- The impact of the student with a disability on the children and teacher in the classroom;
- The cost of the supplementary aids and services required to mainstream the student.

Other cases:

- Beth B. v. Van Clay: 282 F. 2d 493 (7th Cir. 2002).
Other cases:

- Barnett v. Fairfax County School Board, 927 F.2d 146 (4th Cir. 1991)
- Hartmann v. Loudon County Board of Education, 118 F3d 996 (4th Cir. 1997)
- Derries v. Fairfax County School Board, 882 F2d 876 (4th Cir. 1989)

Recent Amicus

- A.G. v. Wissahickon School District: COPAA Amicus brief on the website. Cites to large body of research that supports inclusive education

The End

- Closing thoughts
- Questions