



“ What Does the Term “Least Restrictive Environment” Really Mean?”

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The term “Least Restrictive Environment” is common in the area of special education. But what does that term really mean? More importantly, do school district personnel know their obligations with respect to the IDEA’s LRE requirements? This article provides an overview of the regulations and caselaw pertaining to school districts’ obligations in placing children with disabilities in the least restrictive environment (LRE).

In the landmark case *Brown vs. Board of Education*, which held that it was unconstitutional to segregate schools based on race, the Supreme Court stated,

Today, education is perhaps the most important function of state and local governments. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. To separate grade school and high school children from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of children and to deprive them of some of the benefits they would receive in an integrated school system.

347 U.S. 483 (1954). Although this unanimous Opinion, authored by Chief Justice Earl Warren, was directed at segregation based on race, it establishes the importance of education for all children and recognizes the ill affects segregation has on children.

Under the Individuals with Disabilities Education Act (IDEA), an “appropriate education” is a series of services described in an Individualized Education Plan which is reasonably calculated to afford meaningful educational progress in the LRE. Oberti v. Board of Education, 995 F.2d

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1204(3d Cir. 1993); Polk v. Central Susquehanna Intermediate Unit, 53 F.2d 171 (3d Cir. 1988). In Oberti, the Third Circuit Court of Appeals emphasized the importance of placement in the LRE possible, i.e., programming with non-disabled peers with adequate supports to allow for meaningful progress. The Oberti Court emphasized that IDEA's insistence upon placement in the LRE is based upon a recognition that integration of individuals with disabilities into the mainstream of society and school environments produces social and behavioral benefits for children with disabilities, while allowing them to make meaningful academic progress through proper supports such as classroom aides and the intervention of specialists and therapists. Indeed, the mandates of LRE are of such import that, even if the child could realize greater academic progress in a more restrictive setting, the District is required to offer placement in a LRE.

In pursuit of LRE mandates, each public agency must ensure that children with disabilities are educated to the maximum extent appropriate with nondisabled children and that removal of children from the regular education environment occurs only if the nature and severity of the disability is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily. 34 C.F.R. §300.114 (a)(2). When a child needs to be removed from the regular education environment as a last resort, the District is required to consider a continuum of alternative placements, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 C.F.R. §300.115(b)(1). A child with a disability is not to be removed from education in age-appropriate regular education classrooms solely because of needed modifications in the general education curriculum. 34 C.F.R. §300.116. In making the placement decision, the team is to decide upon a placement in conformity with the LRE mandates of the IDEA and the placement is as close as possible to the child's home. Prior to placing or referring a child with a disability to a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child. 34 C.F.R. §300.325. In addition, the public agency must ensure participation by a representative from the private school, either by personal appearance or telephone participation. The term "public agency" includes local educational agencies, i.e. school districts. 34 C.F.R. §300.33.

In addition to these federal regulations, Pennsylvania regulations also make it clear that school districts are responsible for providing an appropriate program and placement for a child. 22 Pa. Code. §171.13. Where a school district is unable to provide an appropriate program effectively and efficiently, it should then seek the services of the intermediate unit. Approved private schools (APS), state schools and out of state institutions may be used where the school district and intermediate unit cannot provide effective and efficient services. In addition, 22 Pa. Code §171.16 makes clear that an APS is to be considering as a *last resort*. Additionally, a school district is required to provide the parents with written notice of its recommendation for an APS and receive permission to release the notice and the evaluation to the APS. A recommendation may only be made after the child receives an evaluation. 22 Pa. Code §171.15. At a minimum, the evaluation is to include a review of existing cumulative data and documentation.

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Unfortunately many school districts are unaware of both these federal and state regulations. The school then looks to place a child elsewhere without complying with the regulations. When parents question the school district's decision, often parents are told "our school does not have an existing program in place to educate your child's needs." The IDEA makes it clear that schools are required to consider options other than existing programs. Federal and state law provide children with the right to be educated with, not segregated from, their non-disabled peers. If a school fails to do so, parents can and should enforce their and their child's rights through the administrative process. As history has shown, segregation of children "generates a feeling of inferiority ... that may affect their hearts and minds in a way unlikely ever to be undone."

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