

# "My Child Needs to be in All General Education": What Does Least Restrictive Environment and the Continuum of Placements Mean?

**PAULA MADDOX ROALSON**

Attorney at Law  
Houston Office



**WALSH GALLEGOS**  
TREVIÑO KYLE & ROBINSON P.C.



1

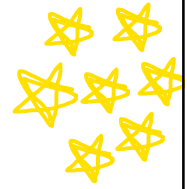
## What is a student's least restrictive environment?

- This varies based on every student!
- “~~...to the maximum extent~~ appropriate, children with disabilities...are educated with children without disabilities, and that special classes, separate schooling, or other removal of children with disabilities from regular educational environments **occur only when 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.**” 20 U.S.C. § 1412 (a) (5)



2

## How do we know if education in general education classes cannot be achieved “satisfactorily”?



- Daniel R.R v. State Board of Education, 874 F.2d 1036 (5th Cir. 1989)
  - “In its effort to find the appropriate placement for Daniel, EPISD experimented with a variety of alternative placements and supplementary services.
  - First, EPISD attempted a mixed placement that allocated Daniel's time equally between regular and special education. The regular education instructor attempted to modify and supplement the regular education curriculum to meet Daniel's needs.
  - When EPISD concluded that Daniel was not thriving in this environment, it proposed a different combination of educational experiences. Under the new plan, Daniel would spend all of his academic time in special education but would mix with [children without disabilities] during lunch and recess.
  - EPISD has provided a continuum of alternative placements and has demonstrated an admirable willingness to experiment with and to adjust Daniel's placement to arrive at the appropriate mix of educational environments.”



3

## How is the least restrictive environment measured? Is a public school less restrictive than a private school?

- The least restrictive environment is measured by how much interaction occurs with the non-disabled population, not by whether schools are public or private
- *Los Angeles USD v. A.O.*, 80 IDELR 98 (C.D. Cal. 2022)



4

## What settings are generally considered less restrictive? More restrictive?

Least Restrictive	More Restrictive	Most Restrictive
<ul style="list-style-type: none"> <li>• Full time general education classroom</li> <li>• General education classroom with supports</li> </ul>	<ul style="list-style-type: none"> <li>• Resource class</li> <li>• Self contained with integrated classroom experience in select areas</li> <li>• Self contained</li> </ul>	<ul style="list-style-type: none"> <li>• Special class/special center/separate campus</li> <li>• Homebound instruction</li> <li>• Non-public day school</li> <li>• Residential placement (full time)</li> </ul>

5

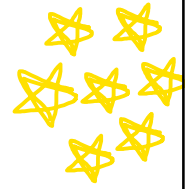


## Does IDEA define the term “supplementary aids and services?”

- No, this term is not explicitly defined.
- Any modifications to the regular education program are considered supplementary aids and services. Common examples include use of assistive technology, notetakers, curriculum modification, or assistance of a teacher with special education training.
- Thus, the first line of inquiry in determining the student’s placement is whether the student’s IEP can be implemented satisfactorily in the regular educational environment with the help of these supplementary aids and services.
- OSEP Memorandum 95-9, Nov. 23, 1994.

6

## What supports can be offered in the general education setting to make it the LRE?



Modifications to the student's work



Using a modified curriculum



One on one support



7

## Is there a burden to consider more restrictive placements only after a child has “failed” in the general education setting?

- No
- The district must first give **consideration** to **placement of a disabled student** in the regular classroom with appropriate aids and services before a more restrictive placement can be considered.
  - The full range of supplementary aids and services must be considered.
  - Were the services sufficient or “mere token gestures”?
- **Consideration**, meaning, a child does not have to be placed in a general education setting if the aids and services could not make it a possible placement.



8

## What questions should we ask the ARD committee?

- Can the student be educated in a general education setting while addressing their academic and social needs? More simply, where can the student make progress?
- Are there any behaviors that indicate that a student cannot be educated in the same classroom setting as their nondisabled peers? If so, what are they? Have we conducted an FBA? Have we implemented behavioral interventions consistently and with fidelity? Is our teacher trained?
- How does the student interact with their disabled and nondisabled peers?
- Can appropriate supports that are not unduly burdensome be provided in the general education setting?
- Will we have to create a "class within a class"?

Most importantly, do we have the data/work samples/evidence to support that a change is needed?



9

## What does the district need to prove to justify a more restrictive placement?

If a child's placement does not confer a "meaningful benefit" to the student and a more restrictive program is likely to provide such benefit, the child is entitled to be placed in that more restrictive program. *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2d Cir. 2008);

When a district places a student in a more restrictive setting because of the student's erratic or dangerous behavior, it should document the information used to make that decision. *J.S. v. Keystone Oaks ISD*, 76 IDELR 125., 120 LRP 11448 (U.S. Dist. Ct W. Dist. Of PA. 2020)

The current situation is not working

The district has given less restrictive placements a good faith effort

The move to a more restrictive placement will benefit the student

*J.P. v. Belton School District No. 124*, 81 IDELR 124 (8th Cir. 2022)



10



## How do we measure a student's progress towards their goals?



- The court has held that the best measurement of student progress is an “an overall academic record-based review” rather than an IEP-centric review.
- This should be a fact-intensive, individualized, holistic approach taking into account:
  - test scores;
  - percentile rankings;
  - IEP progress reports;
  - testimony from qualified professionals, and the like.



• H.W. v. Comal ISD, 81 IDELR 2 (5th Cir. 2022).



11

## How often must the student's placement be evaluated?

- The student's placement must be evaluated annually pursuant to 20 USC 1414
- However, the student's parent, teacher, or other service provider can initiate a request for review of the student's IEP at any point in time.



12

## Can availability of services be a factor in the provision of the LRE?



No, the availability of special education services cannot factor into a student's placement in a more or less restrictive environment than what they need.



However, the availability of services and programs can factor into specific classroom or campus placement as long as the student is still in the LRE appropriate for them.



While there is a preference for the neighborhood school, centralization of services is permissible. There is a key distinction between "placement" and "location."

13

## What factors justify a more restrictive placement?

Student is not making progress in the less restrictive environment

The Student is having a negative impact on other student's learning

Curriculum needs to be modified to the extent that an alternative curriculum is being created

The instructor is unable to use devices and modifications that the Student requires while also educating the nondisabled students

The Student is so disruptive that other students cannot be educated in the same environment

14

## To what extent can the district consider the effect of the Student's placement on nondisabled students?

- IDEA regulations permit consideration of the effect of the placement of a disabled student in a regular classroom on other students in that classroom.
- However, it is more relevant to consider that if a student with a disability has behavioral problems that are so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the disabled student cannot be met in that environment.
- In short, if the Student's behavior is this severe, then none of the students are learning properly, not just the non-disabled students.



15

## Is it ever appropriate to remove a student from their home campus?

- 34 CFR 300.116(c) requires the student to be educated in the school he/she would attend if nondisabled unless the student's IEP requires some other arrangement.
- Yes, removal from the home campus can be warranted if a less restrictive environment is available.
- If special programs are available at other campuses that would allow more interaction with nondisabled peers, then removal to another campus would be appropriate.



16



## Does a student have a right to be served at their home campus?

- There is no “right” to be served at their home campus, although there is a preference for the neighborhood school. Schools can centralize services to meet the needs of low-incidence populations—thus, a student can attend a campus to which they are not otherwise zoned in order to receive FAPE.
- Before deciding on a what the LRE is, however, the ARD committee should come to a consensus on the present levels, the annual goals, the instructional services needed, the related services needed, and the methods of measuring progress.
- Once this is determined, the ARD committee can more accurately assess what is the LRE in which that array of services can be provided.

WG

17



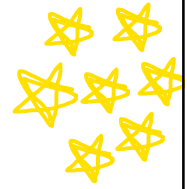
## Is a district obligated to explore alternatives before removing a student from their home campus?

- No, a district is not obligated to do so.
- In *Jacobs v. Salt Lake City School District*, district policy was to provide services to students with cognitive disabilities at certain “hub” schools, rather than the neighborhood school – the court upheld this practice and stated:
  - “...if a student’s IEP calls for placement in another school in order to receive specialized services, a school district is not obligated to fully explore supplementary aids and services before removing a child from a neighborhood school.”
- *Jacobs v. Salt Lake City School District*, 83 IDELR 40 (D.C. Utah 2023)

WG

18

## Must we residentially place a student if the parent requests that the school do so?



If the school district cannot provide the services that the student needs pursuant to the IDEA, then the district may be required to do so



If there is a reasonable alternative by which the District could be able to provide the services, then they would not be required to do so



19

## Are blended learning environments appropriate alternatives to more restrictive settings?

- Yes!
- A blended schedule of both general education and special education courses can allow a student to experience a less restrictive environment.
- Educators should implement appropriate accommodations to aid the student's success in both settings.



20

## Is a vocational program/work considered an appropriate outcome with consideration to LRE?

- Under the IDEA, a segregated employment program designed only for students with disabilities may be an appropriate work placement for a student if determined appropriate by their IEP Team based on the LRE requirements and their specific individualized needs.
- Meaning, the IDEA does not prohibit segregated employment, but the LRE provisions would apply equally to the employment portion of the student's program and placement.

59 IDELR 230, OSEP, June 22, 2012.



WG

21

## What factors can we use to determine if an accommodation would be unduly burdensome to a general education teacher?

Is the accommodation requiring the teacher to use tools/technologies/aids for the Student while also instructing the rest of the class?

- For example, in *Student v. Lamar CISD*, TEA Docket No. 195-SE-0521, (2021), the Hearing Officer determined that requiring the teacher to use a device to communicate with a student while also teaching the nondisabled students in the class would be unduly burdensome

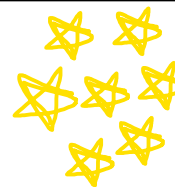
Is the accommodation requiring the teacher to create an alternative curriculum rather than a modified curriculum?

- The IDEA does not require that school districts create an alternative curriculum to keep a student in a less restrictive environment

WG

22


## What results are required for State Performance Plans?




- Under 34 CFR § 300.601(a)(3), as part of its SPP, each State must establish measurable and rigorous targets for the indicators established by the Secretary for the priority areas described in § 300.600(d).
  - One of these priority areas is the provision of FAPE in the LRE.
- IDEA does not prescribe the number or percentage of children with disabilities who must be educated in any particular environment. Goals are set by the state, and it is expected that the state will consider local circumstances.
- In their 2008 letter, OSEP noted that IDEA's LRE principle expresses a **strong preference, not a mandate**, for educating every child with a disability in the regular educational environment.




23



**Paula Maddox Roalson**  
**proalson@wabsa.com**





10370 Richmond Ave.  
Suite 1400  
Houston, Texas 77042  
(713) 789-6864



© Walsh Gallegos 2023

24



The information in this presentation was prepared by Walsh Gallegos Treviño Kyle & Robinson P.C. It is intended to be used as general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.