

**“From General Education to
Residential Placement”:
How to Determine the Least Restrictive
Environment**

By
Cynthia Buechler
Buechler & Associates, P.C.
512-322-0588
attorneys@buechlerlaw.com

Least Restrictive Environment

The IDEA requires that a student with a disability shall be educated with peers without disabilities to the maximum extent appropriate and that special classes, separate schooling and other removal from the regular education environment 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. This provision is known as the “least restrictive environment requirement.” 34 C.F.R. § 300.114(a)(2)(i)-(ii).

Continuum of Placement

State regulations require a school district's continuum of instructional arrangements be based on students' individual needs and IEPs and include a continuum of educational settings, including: mainstream, homebound, hospital class, resource room/services, self-contained (mild, moderate, or severe), off-home campus, nonpublic day school, or residential treatment facility. 19 Tex. Admin. Code § 89.1005(c).

Student v. Lago Vista ISD

SOAH Docket No 701-23-13018 (January 2024)

Student qualified for services as OHI and Speech. [The decision redacted what appeared to be another disability]

The Student was being educated in a general education setting with accommodations, modified curriculum, and supports and in a special education resource setting for his math and reading. The District was providing Student with multiple accommodations and modifications to the curriculum in Student's general education classes. Student was not successful in Student's special education resource classroom or in Student's general education classrooms with these accommodations and modifications.

Student v. Lago Vista ISD

SOAH Docket No 701-23-13018 (January 2024)

Teachers in both settings testified that Student required near continuous one- on-one support, with teachers forced to choose between educating Student or educating the rest of the classroom. Despite this level of attention, Student was unable to grasp the concepts in class. Student did not receive much educational benefit from either setting because Student could not keep up with the curriculum. While Student was passing Student's classes, Student was not being graded on academic performance, but rather on effort. Student required repetition of concepts and, even with repetition, was unable to apply information without additional prompting. Student was also performing significantly below grade level in Student's classes and was missing many pre-requisite skills needed for academic progression. The hearing officer found that keeping Student full- time in a classroom trying to complete grade level work would not be appropriate in light of Student's unique circumstances.

Student v. Lago Vista ISD

SOAH Docket No 701-23-13018 (January 2024)

The hearing officer found that the self-contained placement would allow Student to be with peers working on Student's level and allow Student to receive a FAPE.

Further, the hearing officer stated that the self-contained classroom is currently the best placement for Student to provide one-on-one instruction at Student's academic level. Student would be able to repeat concepts as needed and the curriculum was designed to help Student develop necessary pre-requisite skills and meet Student's unique educational needs.

Student v. Lago Vista ISD

SOAH Docket No 701-23-13018 (January 2024)

The Hearing Officer found that while the record demonstrates that Student had friendships with classmates and was very well-liked by Student's teachers, when balancing the overall benefits of continuing Student's current educational placement against allowing Student to attend the self-contained classroom, the potential academic benefits of the proposed placement in the self contained classroom outweigh the social benefits of Student's current placement. The record also demonstrates that Student needs greater accommodations and modifications than can be reasonably provided in the resource classroom setting. Therefore, the self-contained classroom placement proposed by the District represents Student's least restrictive environment and the best placement in which Student can make academic progress and in which the District can meet Student's unique needs.

Student v. Lago Vista ISD

Lessons Learned

1. To determine whether a school district is educating a student with a disability in the least restrictive environment, consideration must be given to:
 - Whether the student with a disability can be satisfactorily educated in general education settings with the use of supplemental aids and services; and
 - If not, whether the school district mainstreamed the student to the maximum extent appropriate.

Student v. Lago Vista ISD

Lessons Learned

2. The determination of whether a student with a disability can be educated in general education settings requires an examination of the nature and severity of the student's disability, the student's needs and abilities, and the school district's response to the student's needs.

Student v. Lago Vista ISD

Lessons Learned

3. This determination requires an examination of:
 - a school district's efforts to provide the student with supplemental aids and services in the general education setting;
 - a school district's efforts to modify the general education curriculum to meet the student's individual needs;
 - the educational benefit a student is receiving while placed in the general education setting; and
 - the impact the presence of the student with a disability has on the general

Student v. Lago Vista ISD

Lessons Learned

4. Nothing in the IDEA requires a school to devote all or most of a teacher's time to one student. The IDEA does not require a school district to create an alternative curriculum or offer a "classroom within a classroom" in order to comply with the IDEA's LRE requirement. *Brillon v. Klein Indep. Sch. Dist.*, 100 Fed. App'x. 309, 313 (5th Cir. 2004).

Student v. Fort Bend ISD

Docket No 353-SE-0823 (March 2024)

The student qualified for services with specific learning disabilities.

At an ARD meeting, the district was proposing placing the student in resource for two classes. The hearing officer found that resource was appropriate for one of the classes, but not for the other class.

The hearing officer found that the District had taken strong efforts to educate Student in a general education setting. Its IEPs for Student over recent years showed genuine attempts to create, implement, and modify various accommodations to maximize Student's mainstreaming in all Student's core subjects. These efforts were not mere token steps by the District.

Student v. Fort Bend ISD

Docket No 353-SE-0823 (March 2024)

For one class, the hearing officer found that the level and amount of accommodations essentially modified Student's curriculum to where instruction for the Student was a "classroom within a class."

The level and frequency of accommodations for Student's instruction in the second class were markedly less than what Student received for the other general education classroom. No District witness ever characterized Student's in-class support for that class as a "classroom within a class."

In one class, the teacher testified that even though Student received good grades, Student was nowhere near doing the functions independently, had not progressed since school began, and Student needed more and more help. The student was far below grade level.

Student v. Fort Bend ISD

Docket No 353-SE-0823 (March 2024)

The hearing officer found that the evidence showed that at least with respect to Student's one class, Student did not appear to associate with or benefit to any material degree from Student's nondisabled peers. Further, Student's case manager observed that Student appeared to feel ashamed in having to perform work in class at a lower level than the other students.

Regarding Student's educational benefit in general education in the other class, the Hearing Officers found that the Student appeared to show a greater level progress in that subject than the other and noted that the Student's teacher from the other class reported that Student's current goals and plan of service, including accommodations for her class, "continued to be appropriate."

Student v. Fort Bend ISD

Docket No 353-SE-0823 (March 2024)

Student's overall experience showed mixed success in general education, with one subject creating the most difficult obstacles for Student in mastering Student's goals and making progress. According to the hearing officer, the record showed that Student may well benefit more in a Resource setting with a smaller class size, slower pace, and more one-on-one attention for one of the subjects.

With respect to the other class, the hearing officer found that the evidence did not show that Student required as radical a modification to Student's curriculum as Student needed for the other subject. And as noted above, Student's current teacher in the other class and Student's case manager supported the conclusion that Student does not necessarily require instruction in a Resource setting. Again, Student's current teacher in the other class stated that Student's placement in a general education setting was "appropriate."

Student v. Fort Bend ISD

Docket No 353-SE-0823 (March 2024)

In this case, the evidence was manifest that Student's needs required Student's teachers in one subject to devote the large majority of their time instructing Student and providing accommodations that exceeded any level provided elsewhere within the District. And while Student's teacher in the other class also devoted a significant amount of time to the student, the accommodations and modifications were significantly less.

The Hearing Officer concluded that the proposed IEP for Student for the 2023- 2024 school year, requiring Student to receive both subjects in a Resource setting, is not the least restrictive environment for Student's instruction. The Hearing Officer opined that this placement does not mainstream Student to the maximum extent appropriate. At this point in Student's education, a balancing of all the factors suggests that a more gradual approach to a Resource setting beginning with one subject only is more appropriate and would be more beneficial for Student.

Student v. Fort Bend ISD

Lessons Learned

1. The IDEA does not require schools to implement IEPs to the extent of modifying the general education curriculum beyond recognition.

Student v. Fort Bend ISD

Lessons Learned

2. Resource setting is another term for self-contained special education classroom rather than in-class support by special education teachers in a general education classroom setting. Resource classrooms look identical to general education classrooms. Only the class size is different.

Student v. Fort Bend ISD

Lessons Learned

3. The requirement of a least restrictive environment is not an all-or-nothing educational system in which children with disabilities attend either regular or special education. Rather, the Act and its regulations require schools to offer a continuum of services. Thus, the school must take intermediate steps where appropriate, such as placing the child in regular education for some academic classes and in special education for others.... The appropriate mix will vary from child to child and from school year to school year as the child develops.

Student v. Fort Bend ISD

Lessons Learned

4. Sometimes a student may require so much of an instructor's attention that the instructor has to ignore the other students' needs to tend to the disabled child's needs. Although regular education instructors must devote extra attention to their students with disabilities, the courts will not require them to do so at the expense of their entire class.

Student v. Fort Bend ISD

Lessons Learned

5. While a student may not grasp all the concepts and absorb only a minimal amount of the regular education program, Student may benefit enormously from the language models that Student's nondisabled peers provide for Student. In that case, the benefit Student receives from mainstreaming may tip the balance in favor of mainstreaming, even if the student does not flourish academically. Daniel R.R. at 1049.

Student v. Fort Bend ISD

Lessons Learned

6. Courts have found that academic achievement is not the only benefit of mainstreaming and that a student may benefit enormously from modeling of Student's nondisabled peers.

Student v. Schertz-Cibolo-Universal City ISD

Case No. SA-CV-0636-JKP (January 2024)

The student had received services from the district under the eligibilities of Autism, Speech and OHI. He exhibited behaviors and his physician provided that he should receive homebound services when he could not tolerate school. He made significant academic and behavioral progress in his 4th grade year. Because they liked the teacher, the parents asked for him to be held back so that he could have the teacher for another year. The student continued to make progress both academically and behaviorally. In the spring semester, the parents withdrew him from school and lived in England for that semester. Upon returning the next school year, the physician again recommended homebound when the student could not tolerate school.

Student v. Schertz-Cibolo-Universal City ISD

Case No. SA-CV-0636-JKP (January 2024)

After a few months, the parents placed the student in a private school for autism and asked the school to pay for the program. An ARD meeting was held that determined the student could attend a full day and that they had an appropriate program. After the parents threatened to file for hearing, the school paid a lump sum for the student to receive educational services for the remainder of that school year and the subsequent school year.

Student v. Schertz-Cibolo-Universal City ISD

Case No. SA-CV-0636-JKP (January 2024)

When the services ended under the agreement, the parents sought for the school to continue paying for the private school, including the summer. The school district had an ARD meeting and asked to evaluate the student and observe the student in the private setting and to receive records of the student's performance from the private school. Several ARD meeting were held to develop a program. A one-page document was provided by the private school as to the student's current performance. Based upon their observations and the information provided, the school determined that it could provide the ESY services. The parent disagreed and continued to ask for payment for the private school. The student did not attend the district's ESY. For the first two weeks, the student and his family vacationed in Europe.

Student v. Schertz-Cibolo-Universal City ISD

Case No. SA-CV-0636-JKP (January 2024)

The ARD committee also developed an IEP for the following school year pending the results of the evaluation. The parents never brought the student to school. Instead, they continued the private school program and then placed the student residentially out of state. The parents filed for hearing asking for the private school placement and when the student was residentially placed, they requested the school pay for the residential placement.

After the evaluation was completed, the ARD committee met to review the evaluation. The evaluation found that the student also qualified as Intellectually Disabled. The IEP was revised based upon the evaluation. The parent disagreed with adding the ID label and with the IEP and continued to request residential placement.

Student v. Schertz-Cibolo-Universal City ISD

Case No. SA-CV-0636-JKP (January 2024)

The Court found that the school had an appropriate educational program available for the student. The Court also found that medical, rather than educational, purposes drove the residential placement decision. The facility's focus was not on educating the student. The facility provided a highly restrictive environment that utilized seclusion and other forms of restraint, including medical restraint. Accordingly, the court found that the residential facility was a hospital facility that was not for educational purposes. While it had an educational component, that was clearly not the reason for the student's admissions.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

1. To determine whether an IEP provides a meaningful "educational benefit", courts must look beyond mere "weaknesses caused by the student's disability." They must instead focus on the student's overall educational benefit, not solely disability remediation.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

2. Progress on “IEP goals and objectives, as well as recorded test scores and percentile rankings, can aid this process, but no one factor can overwhelm it.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

3. To determine LRE, the courts must first ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. If it cannot and the school intends to provide special education or to remove the child from regular education, courts must ask, secondly, whether the school has mainstreamed the child to the maximum extent appropriate.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

4. IDEA left “primary responsibility” for formulating the educational program “and for choosing the educational method most suitable to the child’s needs to the state and local educational agencies in cooperation with the parent or guardian of the child.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

5. Schools determine educational methodology, not ARD/IEP committees.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

6. If the district offers a proper and timely FAPE, there is not an obligation to reimburse for private school expenses.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

7. IDEA authorizes reimbursement for the cost of private special education services when a school district fails to provide a FAPE and the private school placement is appropriate, regardless of whether the child previously received special education or related services through public school.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

8. Even when the first two factors have been met, Courts still retain discretion to reduce the amount of a reimbursement award if the equities so warrant.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

9. A court's review is limited to whether the IEP is reasonable, not ideal.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

10. School's only need to offer IEPs that are "reasonably calculated to enable" the student to make progress in light of his or her unique circumstances.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

11. The four factors for determining whether the school district has developed an appropriate IEP are the following:

- Whether the program is individualized on the basis of the student's assessment and performance;
- Whether the program is administered in the least restrictive environment;
- Whether the services are provided in a coordinated, collaborative manner by the key stakeholders; and
- Whether positive academic and non-academic benefits are demonstrated.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

12.To comply with IDEA, an IEP sufficient under the IDEA need not be perfect nor must it insulate a child from experiencing hardships while being subject to the IEP.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

13.The fact that a parent's position regarding their child's education was not adopted by the ARD/IEP committee does not mean that the parents were denied the ability to be a participant in their child's education.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

14. "Freedom from restraint" is a benchmark of LRE along with the freedom to associate with able-bodied peers to the maximum extent possible.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

15. The fact that the student's behavioral issues affected his ability to receive educational benefit does not transform the issues from a medical/safety issue to one primarily for educational purposes. A need for hospitalization is a medical/safety issue that transcends any educational issue a child might have. IDEA is not intended to provide for hospitalization admissions or to pay for them if parents unilaterally choose that route.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

16. For a residential placement to be appropriate under IDEA, it must be essential in order for the student to receive a meaningful educational benefit.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

17. IEPs concern the educational needs of students, but they are not required to provide perfect educational opportunities nor are they required to address every desire of a parent or every medical need.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

18. A student's hospitalization does not mandate a finding that a school district has failed to provide the student with FAPE.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

19. The nature of IEPs and BIPS demand some flexibility for modification should needed changes become apparent. Such flexibility does not mean that a developed IEP is insufficient to provide a FAPE. It simply recognizes the reality that changes may be needed as more data is available.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

20. Procedural errors do not constitute a violation of the right to FAPE absent a showing of substantive harm.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

21. Without a reasonable request to delay or reschedule, there is no substantive harm from a school district proceeding with a needed ARD/IEP meeting that parents had declined to attend. Absent a showing that the request for delay was reasonable, a school district's failure to accommodate a request to delay or reschedule does not seriously infringe on a parent's opportunity to participate in the IEP formulation.

Student v. Schertz-Cibolo-Universal City ISD

Lessons Learned

22.A soon-to-be teacher satisfies the IDEA requirements for ARD/IEP required members for a student who is not currently attending the school district.

DISCLAIMER

The legal information provided during this webinar is for general purposes only. It is not intended as a substitute for individual legal advice or the provision of legal services. Accessing this information does not create an attorney/client relationship. Individual legal situations vary greatly and attendees should consult directly with an attorney.

©National Educators Law Institute