



**THE “CONTINUUM OF PLACEMENTS” AND COGNITIVE CHALLENGES:  
WHAT DOES LEAST RESTRICTIVE ENVIRONMENT MEAN WHEN A STUDENT  
NEEDS FUNCTIONAL ACADEMICS AND LIVING SKILLS?**

BY CYNTHIA BUECHLER, BUECHLER & ASSOCIATES

**LEAST  
RESTRICTIVE  
ENVIRONMENT**

Under the Individuals with Disabilities Education Act, originally, the Education of the Handicapped Act, the requirement for Least Restrictive Environment (LRE) was driven by several key social, legal, and educational forces. This legislation was introduced in 1975.

**CIVIL RIGHTS  
MOVEMENT  
AND PRINCIPLES  
OF EQUAL  
ACCESS**

During the 1950s–1970s, the broader civil rights movement emphasized equal access to public services. The logic that “separate is inherently unequal,” established in *Brown v. Board of Education* (1954), influenced disability-rights advocates. This created momentum for integrating students with disabilities into general education settings.

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**ADVOCACY BY  
PARENTS AND  
DISABILITY-  
RIGHTS  
ORGANIZATIONS**

Parents increasingly demanded that their children receive education alongside nondisabled peers rather than in isolated institutions. Grassroots disability-rights organizations pushed Congress to address widespread exclusion and segregation of students with disabilities.

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## LANDMARK COURT CASES PRIOR TO IDEA

- Two major federal cases directly led to LRE principles in the 1975 legislation:
  - PARC v. Pennsylvania (1972) – Established that students with intellectual disabilities were entitled to public education and that segregation required strong justification.
  - Mills v. Board of Education (1972) – Required that schools provide education to all students with disabilities and emphasized placement in settings as close to regular classrooms as possible.
- These cases highlighted the unconstitutional exclusion and unnecessary segregation occurring in public schools.

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## CONGRESSIONAL REPORTS SHOWING WIDESPREAD EXCLUSION

Before IDEA, Congress found:

- Over 1 million children with disabilities received no education at all.
- Millions more were placed in segregated settings regardless of individual needs.

These findings pushed Congress to require that schools justify any removal from the general education classroom.

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## **EDUCATIONAL RESEARCH**

By the early 1970s, studies showed that many children with disabilities benefited academically and socially from interaction with nondisabled peers. This research supported legislative language mandating that students be educated with their peers “to the maximum extent appropriate.”

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## **PROVIDING FAPE**

The first step in providing FAPE is to determine whether an IEP is reasonably calculated to provide a meaningful education benefit under the IDEA.

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## MEANINGFUL EDUCATIONAL BENEFIT

To make that determination, the courts look at the four factors that are set forth in *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. ex rel. Barry F.*, 118 F.3d 245, 252 (5th Cir. 1997)

The four factors are:

1. The program is individualized on the basis of the student's assessment and performance;

2. The program is administered in the **least restrictive environment.**

3. The services are provided in a coordinated and collaborative manner by the key 'stakeholders'; and

4. Positive academic and non-academic benefits are demonstrated.

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## LEAST RESTRICTIVE ENVIRONMENT

With respect to whether the placement is in the least restrictive environment, the court considers whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child.

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**MAXIMUM  
EXTENT  
APPROPRIATE**

To comply with the IDEA, a student's plan must provide for placement with nondisabled peers to the maximum extent appropriate.

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**DANIEL R.R.**

Do make that determination, the courts consider several non-exhaustive factors. These factors were set forth in the "OG" of cases on the Least Restrictive Environment, *Daniel R.R. v. State Board of Education* which was decided in 1989.

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## LRE FACTORS

1. Whether the state has taken steps to accommodate the child with a disability in regular education;

2. Whether the child will receive an educational benefit from regular education;

3. The child's overall educational experience in the mainstreamed environment, balancing the benefits of regular and special education for each individual child;

4. What effect the child's presence has on the regular classroom environment and, thus, on the education that the other students are receiving.

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# 1

## FIRST FACTOR

The first factor from the Daniel R. R. decision centers on whether the school has made reasonable efforts to ensure the child's participation in general education through appropriate modifications, accommodations, and support services. This includes evaluating whether the school has:

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# 1

## FIRST FACTOR

Provided necessary supplementary aids and services (like specialized instruction or support staff),

Made modifications to the curriculum and classroom environment,

Ensured the child could participate meaningfully in the general education setting with supports in place, and

Engaged in ongoing evaluation to determine the success of the accommodations.

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## SECOND FACTOR

- To determine the second factor of whether the student is receiving a benefit from the general education setting, the court will focus on the student's ability to grasp the essential elements of the regular education curriculum.
- This means that the court will pay close attention to the nature and severity of the student's disability(s) as well as to the curriculum and goals of the regular education class.

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**MORE  
THAN “DE  
MINIMUS”**

It cannot be a “de minimis” educational benefit; instead, it must be progress appropriate in light of the student’s individual circumstances.

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**APPROPRIATELY  
AMBITIOUS**

If grade-level advancement is not ‘a reasonable prospect for the child then the educational program for a disabled student must be “appropriately ambitious in light of the student’s circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.

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## **USE OF TEST SCORES**

This does not mean that grade-level advancement and tests scores cannot be considered when determining whether a student with significant challenges is appropriately progressing. Advancement and test scores are still valid, important metrics that the courts consider.

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## **PROGRESS TOWARD IEP OR OVERALL ACADEMIC RECORD**

Do the courts primarily rely on a student's progress toward the student's IEP goals or instead look to the student's overall academic record when determining whether she is making appropriate progress?

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**OVERALL  
ACADEMIC  
RECORD**

To make this judgment, the courts look to a student's overall academic success, not whether the child's disability has been remedied.

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**THIRD  
FACTOR**

It's not only about academic achievement. The court recognized that social interaction with non-disabled peers is an important factor in the child's development. The decision noted that regular education settings can offer important social, emotional, and behavioral benefits that contribute to the child's overall development.

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## **FOURTH FACTOR**

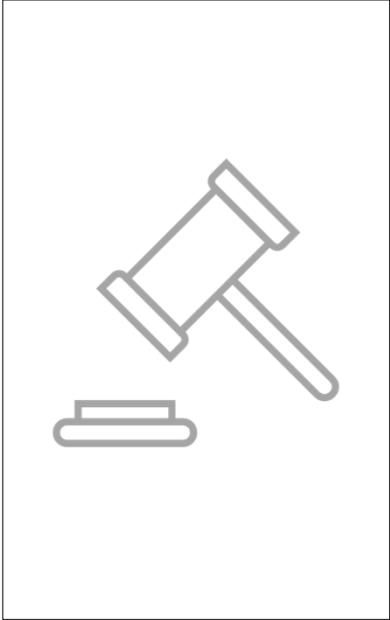
Consideration is also given to how placing the child with a disability in a regular education setting affects the education of other students. For example, if the child's needs are so significant that their participation in the regular classroom would substantially disrupt the education of others, this could weigh against placement in a general education setting.

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## **CONTINUUM OF PLACEMENTS**

The IDEA requires "schools to offer a continuum of services." This means that schools must take intermediate steps where appropriate. Because mainstreaming determinations require independent, case-by-case evaluations, the appropriate mix of general to special education classes will vary from child to child.

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# H.W.V. COMAL INDEPENDENT SCHOOL DISTRICT IS: 32 F.4TH 454 (5TH CIR. 2022)

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## CASE LAW

In *H.W. (By and Through Jennie) v. Comal Independent School District*, the Fifth Circuit Court of Appeals affirmed a school district's decision to move an elementary student with cognitive challenges from a full general education placement to a "blended" program with a significant special education component. The court held the school district's proposed IEP provided an appropriate education in the least restrictive environment

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## KEY FACTS

H.W., an elementary school student, had several disabilities including Down syndrome, hypothyroidism, ADHD, asthma, and a speech impairment.

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## KINDERGARTEN

She was initially in general education classrooms with supplementary aids and service in kindergarten. Due to several behavioral issues, the district conducted an FBA and at its annual meeting, approved a BIP.

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## FIRST GRADE

In first grade, an ARD meeting was convened to revise her IEP after determining that she was showing inadequate progress in reaching her goals and objectives. The revised IEP provided for more inclusion support, resource instruction for math and reading, movement breaks and 20 minutes per week of social skills instruction in a special education setting.

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## FIRST GRADE (CONTINUED)

However, over time, the school district determined she was making minimal academic progress and even regressing in some areas and recommended for the upcoming school year that she receive part or all instruction in a special education setting. They recommended increased resource room time, doubled inclusions support and half of her speech-language therapy to take place in a special education setting. The parents disagreed and the ARD committee relented.

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## SECOND GRADE

- The student began the second grade year and the ARD committee met to significantly increase her inclusion support and provide for more movement breaks. In November, the IEP team increased her resource time and provided for  $\frac{3}{4}$  of her speech in the special education setting. In March 2020, the ARD committee developed the IEP for third grade.
- The ARD committee recommended that she be removed from general education and be placed in the Essential Academics Setting, a self-contained special education classroom that provided different formats of instruction such as repetitive hands-on activities and an alternative curriculum with no typically developing students.

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## SECOND GRADE (CONTINUED)

The District proposed a "blended" placement where the student would spend 235 minutes per day in special education (plus additional time for speech therapy) and 150 minutes per day in general education for nonacademic activities (e.g., lunch, recess, extracurricular activities).

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## SECOND GRADE (CONTINUED)

H.W.'s mother objected to the change in placement, arguing that the general education classroom was the appropriate LRE and filed for due process hearing.

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## FIRST FACTOR

- The court found that H.W.'s IEP was incrementally amended over a course of approximately three years. Each amendment provided for either more inclusion support, special education, or resource room time.
- Although H.W. occasionally saw glimpses of progress, the bottom line was one of stagnation, minimal improvement, and, at times, even regression. Therefore, the court found that H.W. was placed in her least restrictive environment.

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## SECOND FACTOR

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- The Appellate Court found that the district court correctly reviewed H.W.'s overall academic record and found that the student was not making appropriate progress in light of her circumstances.
  - The record, which included test scores, percentile rankings, IEP progress reports, testimony from qualified professionals, and other data revealed that H.W. could not grasp the essential elements of the regular education curriculum.

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## SECOND FACTOR (CONTINUED)

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- The progress reports tracked H.W.'s progress toward 17 IEP goals/objectives. H.W. "mastered" 11 of those 17 goals. While H.W. undoubtedly mastered many of her IEP goals, she was still unable to make consistent and/or appropriate progress toward several of those goals in a general education setting.
  - The ARDC frequently reconvened to try and help her meet her goals. It gradually increased the assistance afforded to her. And it even lowered her mastery criteria with her parent's consent, yet H.W. still struggled in many regards.

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## SECOND FACTOR (CONTINUED)

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- From the spring of first grade to the winter of second grade, H.W. declined in percentage correct on math and reading questions on the Universal Screener Test. Similarly, the same test showed that H.W. was in the first percentile in every category for first and second grade.
  - These test scores and percentile rankings had real classroom consequences; namely, that H.W. could no longer functionally engage with her peers or the general education curriculum.

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## THIRD FACTOR

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- The Court held that the record supports, that H.W.'s overall "benefit from the regular classroom setting was minimal at best"; she was "less aggressive and exhibited her disruptive behaviors less in the special education setting"; and her "abilities, along with her needs for attention, consistent prompts, redirection, and reinforcement, and her limited engagement with her peers in the regular classroom activities emphasize her need for specialized instruction."

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## THIRD FACTOR

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- The Court acknowledged that the district court did note that H.W. could potentially “benefit from the language models of her peers in the regular education setting or in other ways.” Nevertheless, it correctly concluded that the preponderance of the evidence supported the District’s decision.

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## FOURTH FACTOR

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The record shows that H.W. hit, bit, and kicked staff and peers; yelled, screamed, moaned, and grunted in the classroom; and swiped materials off desks.

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## COURT'S RULING

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- The Fifth Circuit Court of Appeals affirmed the decisions of both a hearing officer and the district court, ruling in favor of the District.
  - The case is a significant example of how courts apply the LRE requirement, balancing the benefits of inclusion with the need for a student to receive meaningful educational benefit through specialized instruction.

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**A.B. EX REL.  
JAMIE B. V.  
CLEAR CREEK  
INDEPENDENT  
SCHOOL  
DISTRICT, 787 F.  
APP'X 217 (5TH  
CIR. 2019) (PER  
CURIAM)  
(UNPUBLISHED)**

In this case, the Court found that A.B. ;

- 1) received positive academic and non-academic benefits in general education;
- 2) he exhibited more progress in a general education than special education setting; and
- 3) he resolved his behavioral issues.

He was primarily moved to a more restrictive setting for behavioral issues that subsided.

Therefore, the court ruled that the student could not be removed to a special education setting.

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**BRILLON V.  
KLEIN  
INDEPENDENT  
SCHOOL  
DISTRICT, 100 F.  
APP'X 309 (5TH  
CIR. 2009) (PER  
CURIAM)  
(UNPUBLISHED)**

In this case, the court found that the student was properly placed in special education when he:

- 1) was not making academic progress in the general education setting and received an indiscernible social benefit from education among typically developing peers;
- 2) performed better in the special education setting; and
- 3) required a modified curriculum that changed the general education curriculum "beyond recognition."

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**QUESTIONS?**

**NELI** NATIONAL  
EDUCATORS  
LAW INSTITUTE 

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