

Least Restrictive Environment (LRE) and Educational Placement for Students with Individualized Education Programs (IEPs)

22 Pa. Code § 14.102 (a) (2) (xxiv)

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Introduction

This Basic Education Circular updates the policy of the Pennsylvania Department of Education (PDE) on least restrictive environment and educational placement for students with Individualized Education Programs (IEPs). This policy is consistent with IDEA 2004, the Third Circuit decision in *Oberti v. Board of Education* (1992), and the *Gaskin v. Pennsylvania Settlement Agreement* (2005). This Basic Education Circular is primarily directed at school-age students with disabilities. Although components of this BEC apply as well to preschool-age children, PDE is developing specific guidance for preschool-age children.

The *Individuals with Disabilities Education Act*, 2004 (also known as the *Individuals with Disabilities Education Improvement Act*), requires ...*(1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are non-disabled; and (2) That special classes, separate schooling or other removal of children with disabilities from the regular educational 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.* [20 USC 1412 Section 612 (a) (5), and its implementing regulation found at 34 C.F.R. §300.114(a)].

This requirement has been part of disability education law for over thirty years and is often referred to as the "Least Restrictive Environment (LRE) mandate." By law, it is the IEP team that decides on the educational placement for an individual student. The law and PDE policy require that each local education agency and IEP team make educational placement decisions based on the general principles outlined below.

General Principles

IEP teams are required to adhere to the following when making educational placement decisions:

1. A Free and Appropriate Public Education (FAPE) must be provided to every student with an IEP; moreover, FAPE must be delivered in the LRE as per the IEP team.
2. Students will not be removed from regular education classrooms merely because of the severity of their disabilities
3. When students with disabilities, including students with significant cognitive disabilities, need specially designed instruction or other supplementary aids and services to benefit from participating in regular education classrooms, as required in their IEP, local education agencies are obliged to ensure that those services are provided;

4. IEP teams must determine whether the goals in the student's IEP can be implemented in regular education classrooms with supplementary aids and services before considering removal from the regular education classroom;
5. School districts will consider the full range of supplementary aids and services in regular education classrooms, based on peer-reviewed research to the extent practicable, including modification of curriculum content, before contemplating placement in a more restrictive setting.

To determine whether a child with disabilities can be educated satisfactorily in a regular education classroom with supplementary aids and services, the following factors must be considered and addressed in the IEP:

1. What efforts have been made to accommodate the child in the regular classroom and with what outcome(s);
2. What additional efforts (i.e. supplementary aids and services) in the regular classroom are possible;
3. What are the educational benefits available to the child in the regular classroom, with the use of appropriate supplementary aids and services; and
4. Are there possible significant and negative effects of the child's inclusion on the other students in the class?¹

The presumption is that IEP teams *begin* placement discussions with a consideration of the regular education classroom and the supplementary aids and services that are needed to enable a student with a disability to benefit from educational services. Benefit from educational services is measured by progress toward the goals and objectives of the student's IEP, not by mastery of the general education curriculum, and is not limited to academic progress alone; therefore, special education placement in a more restrictive environment cannot be justified solely on the basis that the child might make greater academic progress outside the regular education environment.

The law and PDE policy favor education with non-disabled peers; however, inclusion or education with non-disabled peers is not a foregone conclusion; such a decision remains exclusively with the IEP team as they consider FAPE. For some students, the IEP team may conclude that a more specialized setting is necessary for the delivery of FAPE. For example, the IEP team for a student who is deaf may decide that the least restrictive environment and appropriate placement for that student is a "school for the deaf" or an IEP team for a student with autism may decide that an autistic support classroom where specific interventions may be provided is the least restrictive environment and is necessary to implement the IEP. An IEP team may choose a more specialized setting if:

1. The student will receive greater benefit from education in a specialized setting than in a regular class.
2. He or she is so disruptive as to significantly impair the education of other students in the class; or
3. The cost of implementing a given student's IEP in the regular classroom will significantly affect other children in the LEA.

If, after considering these factors, an IEP team determines that the student needs to be educated in a more specialized setting², the school is required to include the child in school programs with non-disabled children to the maximum extent appropriate. These may include but are not limited to extracurricular activities, assembly programs, recess, lunch, homeroom, etc. Note that a student is not required to "try out" each level of LRE and "fail" before the student moves to a more specialized setting (US Department of Education, Office

of Special Education Programs, Memorandum #95-9, 21 IDELR 1152 (November 23, 1994)).

Additionally, PDE policy on educational placement requires that special education students who are also entitled to gifted support under Chapter 16, Special Education for Gifted Students, have a single individualized education plan, (i.e. *single plan*), incorporating all specially designed instruction, accommodations or other support identified by the IEP team. Likewise, if a student has a Service Agreement under 22 Pa. Code, Chapter 15 and also needs gifted support, such accommodations and support will be written in a single plan.

Implications for School Personnel

Experience proves that contact with non-disabled peers can have positive social effects both on children with disabilities and their non-disabled classmates. Additionally, education with non-disabled peers can increase learning for students with IEPs. For many, the result is that children with disabilities learn more in inclusive environments than in segregated or more specialized settings.

Terminology surrounding education in the least restrictive environment has evolved over time. Terms such as mainstreaming, integration and inclusion have been used. The term inclusion implies more than physical proximity to non-disabled peers; it encompasses full participation and equality within a group, leading to a sense of belonging within the community at large.

Implications for School Leaders

- Provide opportunities for teachers to participate in professional development and to become aware of peer-reviewed and research-based practices that can be used to support students in regular classroom settings;
- Ensure that:
 - Program and placement decisions are based on student strengths, potential and needs;
 - IEP teams consider the regular classroom with supplementary aids and services *before* considering a more restrictive environment;
 - Staff is aware of this policy on Least Restrictive Environment.
 - Supportive team structures are in place to enable general education teachers to effectively educate students with IEPs in their regular classroom as appropriate;
 - IEP teams use the most current IEP format;³
 - Educational placement decisions are made in the proper IEP sequence, which is:
 1. Initial eligibility decision;
 2. Determine FAPE and design the program (i.e. IEP);
 3. Determine whether FAPE can be delivered in the regular classroom with the use of supplementary aids and services;
 4. If the answer to step #3 is "no," then, move to the next step along the continuum of placement options to determine where FAPE can be delivered;
 - IEP teams are using a single plan for students who are identified under both IDEA and Chapter 16; and
 - Correct LRE data is entered into the Penn Data system; data on educational placement will be used to identify school districts for on-site monitoring according to the *Gaskin v. Pennsylvania* Settlement Agreement.

Implications for Teachers and Pupil Personnel Staff

- Be familiar with a wide array of supplementary aids and service.⁴
- Know the proper IEP decision making sequence (see above).
- Consider the whole range of supplementary aids and services when making placement decisions.
- Understand that modifications to the regular curriculum may be an appropriate means of delivering educational benefit within the regular classroom.
- Address services needed for a student identified under IDEA and Chapter 16 in a single plan. Likewise address support and accommodations in a single plan for those students identified under Chapter 15 and Chapter 16.
- Be clear about the supports you need in order to implement any given student's IEP within your regular classroom.
- Be familiar with the continuum of placement options.

Implications for LEAs in Meeting State Targets in the State Performance Plan

Under IDEA 2004, each state must establish LRE targets that are both rigorous and measurable and report such progress toward these targets annually to US Department of Education and to the public. PDE gathers data from each LEA to measure progress toward the targets. These targets are established in three categories of educational placement:

- Students outside the regular classroom less than 21% of the school day.
- Students outside the regular classroom more than 60% of the school day.
- Students outside the school district.

More information on the State Performance Plan and Pennsylvania's targets is available at (www.pde.state.pa.us); click on Pre K-12; then Special Education; then on Penn Data for Special Education Data Summary.

In the future, the Department will conduct a series of activities regarding least restrictive environment requirements of IDEA 2004. These activities include (1) monitoring LRE requirements, (2) increased professional development for school personnel, (3) the development of materials to be displayed in all public schools that show "all children are welcome," (4) clarification on the use of supplementary aids and services in the regular classroom and (5) building the capacity of all public schools to provide such aids and services.

¹"A handicapped child who merely requires more teacher attention than most other children is not likely to be so disruptive as to significantly impair the education of other children,"[Greer].

²Examples of more specialized settings include but are not limited to: a student receiving learning support for one period a day in a resource room; student attending a special class all day; student attending a special school outside the district.

³Available at (www.pattan.net)

⁴See Fact Sheet on Supplementary Aids and Services available at (www.pattan.net)

REFERENCES

State Regulations

[22 Pa. Code § 14.102 \(a\) \(2\) \(xxiv\)](#)

Federal Statutes

Individuals with Disabilities Act of 2004, 20 U.S.C. §1412 (a)(5)

Federal Regulations

2006 IDEA Regulations 34 C.F.R. § 300.114(a)

Other

Oberti v. Board of Education of the Borough of Clementon School District., 995 F.2d 1204 (3rd Cir. 1993)

Gaskin v. Pennsylvania, 389 F. Supp. 2d 628 (E.D. Pa. 2005).

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