

LRE IS A LEGAL OBLIGATION, NOT A “ONE-SIZE-FITS-ALL” ANALYSIS

WDE Symposium 2015

Presented by Lenore Knudtson and Mark Mlawer



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You know there is an LRE requirement...

But do you know why?

The History of LRE

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PARC v. Commonwealth of Pennsylvania,
112 LRP
25828 (E.D.
Pa. 1971).

- The seminal 1971 case of *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania* contested a state law that specifically allowed public schools to deny services to children “who have not attained a mental age of five years” at the time they would ordinarily enroll in first grade.

The History of LRE

*PARC v.
Commonwealth
of
Pennsylvania,*
112 LRP
25828 (E.D.
Pa. 1971).

- *PARC* also established the standard of appropriateness—that each child be offered an education appropriate to his or her learning capacities—and established a clear preference for the least restrictive placement for each child.

The History of LRE

Mills v. Board of Education,
103 LRP
43077 (D.D.C.
1972).

- In the following year, in *Mills v. Board of Education*, seven children between the ages of 8 and 16 with a variety of mental and behavioral disabilities brought suit against the District of Columbia public schools, which had refused to enroll some students and expelled others, solely on the basis of their disability.

The History of LRE

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*Mills v. Board
of Education,*
103 LRP
43077 (D.D.C.
1972).

- The school district admitted that an estimated 12,340 children with disabilities within the district's boundaries would not be served during the 1971–72 school year because of budget constraints.

The History of LRE

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*Mills v. Board
of Education,*
103 LRP
43077 (D.D.C.
1972).

- The U.S. District Court ruled that school districts were constitutionally prohibited from deciding that they had inadequate resources to serve children with disabilities because the equal protection clause of the Fourteenth Amendment would not allow the burden of insufficient funding to fall more heavily on children with disabilities than on other children.

The History of LRE



- Placement in a regular public school class with appropriate ancillary services is preferable to placement in a special school class.

Mills v. Board of Education,
103 LRP
43077 (D.D.C.
1972).

The History

- The protections that originated from *PARC* and *Mills* were eventually incorporated into Public Law 94–142 by Congress.
- By 1973, more than 30 federal court decisions had upheld the principles of *PARC* and *Mills*.

The History

- Congressional hearings in 1975 revealed that millions of children with disabilities were still being shut out of American schools: 3.5 million children with disabilities in the country were not receiving an education appropriate to their needs, while almost one million more were receiving no education at all.

U.S. Congress, Committee on Education and Labor, Select Subcommittee on Education. *Hearings*. 93rd Cong., 1st sess., 1973.

The Genesis of LRE

- Signed into law in 1975 by President Gerald Ford, the Education for All Handicapped Children Act (Public Law 94–142) took effect on October 1, 1977.
- The legislation passed by an overwhelming majority. There were only 14 votes against it in the House and Senate combined.

*Joint Hearing on the Individuals with Disabilities Education Act, Part B.
Testimony of Dr. John Brademas. 104th Cong., 2d sess., 1995.*

facts

myths

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Fast forward to today.

The Mandate

34 C.F.R. §300.114

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- Each public agency must ensure 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 nondisabled; **and**

The Mandate

34 C.F.R. §300.114

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- ▣ 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.

- In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the **maximum extent appropriate** to the needs of that child.

The Mandate

34 C.F.R. §300.42

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- *Supplementary aids and services* means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the **maximum extent appropriate**.

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A presumption is the starting point.



The Presumption

- The IDEA **presumes** that the first placement option **considered** for each child with a disability is the regular classroom, with appropriate supplementary aids and services.
- Therefore, before a child with a disability can be placed outside of the regular education environment, the full range of supplementary aids and services that could be provided to facilitate the child's placement in the regular classroom setting must be **considered**.

71 Federal Register 46588.

The Presumption

JUSTIFY

- Because the general classroom is the presumptive starting point for the LRE analysis, a placement away from the general classroom for any part of the school day must be justified.

Describe v. Justify

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Describe

Based on the nature and severity of the student's disability, he requires pull out instruction as needed to support academics.

Justify

The student is not successful in the general math classroom due to his significant skill gap and difficulty paying attention. He is refusing to complete work and does not respond to paraprofessional assistance in the general class. He needs small group instruction delivered in a quiet environment away from the noise and distraction of the general ed. classroom to support math instruction.

Location v. Placement

- Historically, *placement* refers to points along the continuum of placement options available for a child with a disability, and *location* as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services.

71 Federal Register 46588.

The Continuum

34 C.F.R. §300.115

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- Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

The Continuum

34 C.F.R. §300.115

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The continuum must

- Include the alternative placements listed in the definition of special education under § 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
- Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

The Continuum

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Regular Classes

Separate Classes

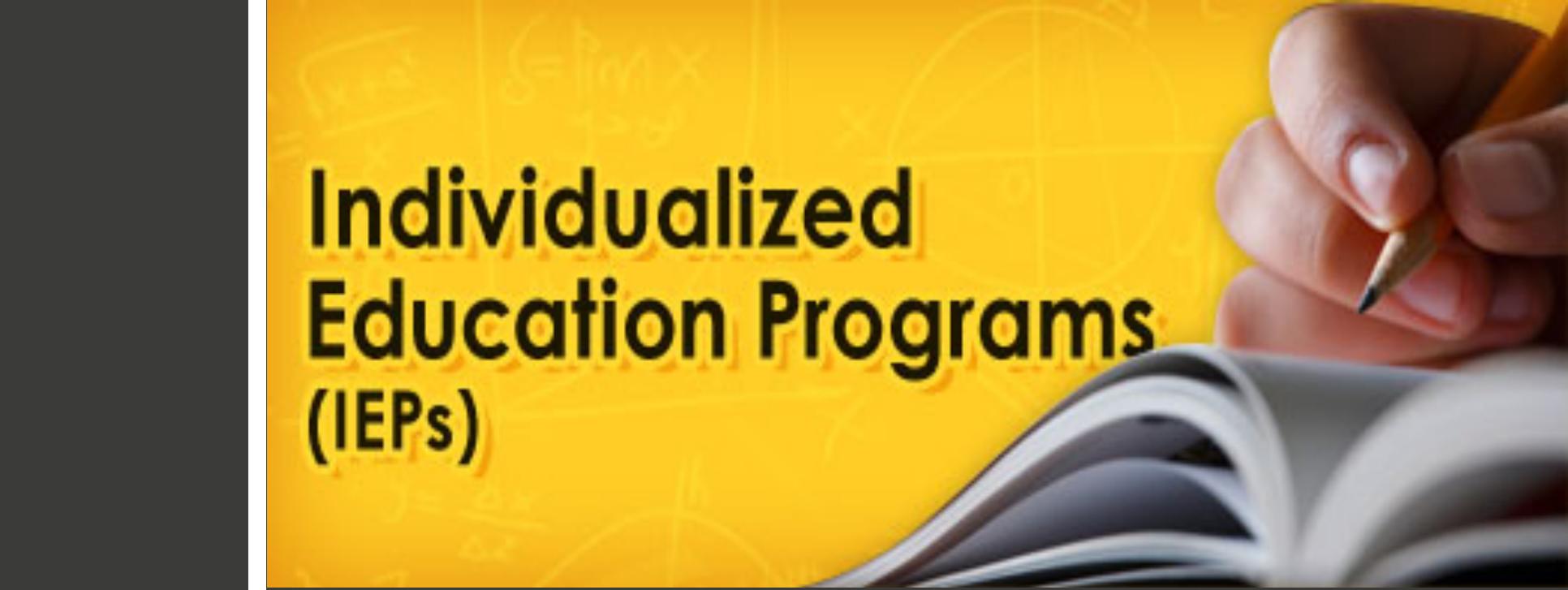
Separate Schools

Residential Settings

Hospital or
Homebound

Continuum Questions

- If a more restrictive placement on the continuum is warranted, when should the team start planning the student's return to a lesser restrictive placement?
- Is it necessary to have the full continuum available within every school building?
- Is it necessary to have the full continuum available within every district?



Individualized Education Programs (IEPs)

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IEP Requirements

Documenting the LRE

LRE Statement

34 C.F.R. §300.320(a)

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- A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—

LRE Statement

34 C.F.R. §300.320(a)

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- To advance appropriately toward attaining the annual goals;
- To be involved in and make progress in the general education curriculum in accordance with paragraph (a) (1) of this section, and to participate in extracurricular and other nonacademic activities; and

- ▣ To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
- ▣ An **explanation** of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in this section.

Denial of FAPE

- An IEP team's failure to document the specific reasons underlying its decision to remove a grade schooler with SLD from her general education classroom for a portion of each school day, such as the types of supplementary aids and services that it considered and rejected, and an explanation of why they would not allow the student to participate in her general education class resulted in a finding that the district failed to offer the student FAPE in the LRE.
- “The Hearing Officer found that the District provided only lip-service to the IDEA's mainstreaming requirement.”

Hannah L. v. Downingtown Area Sch. Dist., 63 IDELR 254 (E.D. Pa. 2014).

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Practical Implementation

Real life examples made better.

Explanation v. Justification

- The student struggles with compliance and work completion. Due to her disability, the student is in need of specialized instruction in the resource room to work on compliance, work completion, and reading comprehension.

Explanation v. Justification

- The student will miss 30 minutes per week for language therapy. His specially designed instruction for written language will happen in the general education setting.

Explanation v. Justification

- Supplemental aids and services cannot facilitate the acquisition of service in reading, writing, math, and communication. The student's skills are significantly compromised without a specially designed curriculum delivered in a one to one or small group setting.

Explanation v. Justification

- The student is removed from the general education classroom to receive his services in reading, math, and written language due to low cognitive ability and limited verbal skill. The self-contained classroom offers academic and functional skills to meet her needs.

Explanation v. Justification

- The student may be removed from the regular classroom at times to work in a quiet, non-competitive environment with a specialist.



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General Education Classroom

When is it the LRE?

Social Benefits Insufficient

H.G. v. Upper
Dublin Sch.
Dist., 65
IDELR 123
(E.D. Pa.
2015).

- The student struggled with the most basic concepts, and frequently became so frustrated that he had to leave the classroom.
- The student would hold his books upside down and take scribbled notes to feel like he was part of the class.
- The student engaged in loud and disruptive behaviors such as calling out and flapping his hands.

Social Benefits Insufficient

H.G. v. Upper
Dublin Sch.
Dist., 65
IDELR 123
(E.D. Pa.
2015).

- In determining the student's LRE, the court considered two factors:
 - ▣ 1) Whether the district could educate the student in a general education classroom with supplementary aids and services; and
 - ▣ 2) If not, whether the district mainstreamed the student to the maximum extent appropriate.

Social Benefits Insufficient

H.G. v. Upper
Dublin Sch.
Dist., 65
IDELR 123
(E.D. Pa.
2015).

- The statutory presumption that children should be taught with their nondisabled peers can seem at odds with the IDEA's goal of providing an appropriate program for a child's unique needs. *Lebron*, 769 F.Supp.2d at 799; *Oberti*, 995 F.2d at 1214.

Social Benefits Insufficient

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H.G. v. Upper
Dublin Sch.
Dist., 65
IDELR 123
(E.D. Pa.
2015).

- The Court in *Oberti* observed that the "key to resolving this tension appears to lie in the school's proper use of 'supplemental aids and services' ... which may enable the school to educate a child with disabilities for a majority of the time within a regular classroom, while at the same time addressing that child's unique educational needs."

Oberti v. Board of Educ. of the Borough of Clementon Sch. Dist., 19 IDELR 908 (3d Cir. 1993).

Social Benefits Insufficient

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H.G. v. Upper
Dublin Sch.
Dist., 65
IDELR 123
(E.D. Pa.
2015).

- The IDEA's mainstreaming requirement does not demand that a child remain in a regular education classroom if doing so would jeopardize the student's ability to achieve a meaningful educational benefit.

Greenwood v. Wissahickon Sch. Dist., 50 IDELR 280 (E.D. Pa. 2008), *aff'd*, 54 IDELR 113 (3d Cir. 2010).

Social Benefits Insufficient

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H.G. v. Upper
Dublin Sch.
Dist., 65
IDELR 123
(E.D. Pa.
2015).

- **Thus, inclusion with non-disabled students is not appropriate when, even with the use of supplementary aids and services, it precludes a disabled child from obtaining an educational benefit.**

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More Restrictive Placements

May be warranted when . . .

Impact on Other Students

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A.G. v.
Wissahickon
Sch. Dist., 54
IDELR 113 (3d
Cir. 2010.

- A district may consider the impact of a student's behavior on the other students in the educational environment in considering whether a removal from the regular education setting is appropriate.
- In *Wissahickon*, the court determined that placement in a regular education setting was inappropriate for the student because she engaged in frequent, loud vocalizations and one teacher had to devote 90 percent of class time to work with her individually.

Altered Beyond Recognition

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Extensive Modification

- The general education environment may not be appropriate for the student if it will require so much modification in the curriculum that the regular program has to be altered beyond recognition.

Lachman v. Illinois State Bd. of Educ., 441 IDELR 156 (7th Cir. 1988), cert. denied, 111 LRP 7412 (1988).

Significantly Disruptive Behavior

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Sch. Dist. No. 11, Anoka-Hennepin v. Renollett, 45 IDELR 117 (8th Cir. 2006).

- If a student engages in significantly disruptive behavior, which interferes with the education of classmates it may be appropriate to consider a more restrictive setting.

Safety or Danger

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Safety

- If a student threatens the safety of other students or poses a danger to himself, the team may determine the regular education environment is not appropriate.

Clyde K. v. Puyallup Sch. Dist., 21 IDELR 664 (9th Cir. 1994).

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LRE & Transition

The analysis remains the same.

Work Settings Matter

- OSEP stated that a transition placement, including a work placement, is no different than any other educational placement in the sense that it may not be unnecessarily restrictive.
- Before assigning a student to segregated employment, the IEP team must look at whether there are steps it could take that would enable the student to work alongside nondisabled individuals.
- If the student cannot be satisfactorily placed in integrated employment, even with supplementary aids and services, then the IEP team may assign the student to segregated employment if determined appropriate based on the student's individual needs.

Letter to Spitzer-Resnick, Swedeen, and Pugh, 59 IDELR 230 (OSEP 2012).

It is the same continuum.

LRE Beyond the School Year

- The LRE requirement applies in the summer months in the same manner as it does during the regular school year because ESY services are an essential program component for students who require year-round services.
- District don't have to recreate lesser restrictive environments during non-school times. Community options may be used to comply with LRE requirements.

T.M. v. Cornwall Cent. Sch. Dist., 63 IDELR 31 (2d Cir. 2014).



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Preschool LRE

Do the same rules apply?

The Vision

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
U.S. DEPARTMENT OF EDUCATION
DRAFT POLICY STATEMENT ON
INCLUSION OF CHILDREN WITH DISABILITIES IN EARLY
CHILDHOOD PROGRAMS
May 15, 2015

Inclusion in Preschool

Inclusion means including children with disabilities in early childhood programs, together with their peers without disabilities, holding high expectations and intentionally promoting participation in all learning and social activities, facilitated by individualized accommodations, and using evidence-based services and supports to foster their cognitive, communication, physical, behavioral, and social-emotional development; friendships with peers; and sense of belonging.

Inclusion in Preschool

- This applies to all young children with disabilities, from those with the mildest disabilities, to those with the most significant disabilities.
- Children with disabilities, including those with the most significant disabilities and the highest needs, can make significant developmental and learning progress in inclusive settings.
- High-quality inclusion that begins early and continues into school likely produces the strongest outcomes.

Inclusion in Preschool

- Inclusion is not only supported by an empirical foundation; it is also supported by a robust legal foundation.
- For children ages three through 21, services are to be provided, to the maximum extent appropriate, in the LRE factoring in an individual child's unique strengths and needs.
- Each LEA must ensure that a free appropriate public education is provided in the LRE regardless of whether the LEA operates public general early childhood programs.

Preschool LRE

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*Dear Colleague
Letter, 58 IDELR
290 (OSEP
2012).*

- The purpose of this letter is to reiterate that the LRE requirements of the IDEA apply to the placement of preschool children with disabilities.
- The statutory provision on LRE does not distinguish between school-aged and preschool-aged children and therefore, applies equally to all preschool children with disabilities.

Preschool Options

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- Include typically developing peers in preschool settings.
- Provide services in private and community based preschools.
- Provide placements in private and community based preschools.



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Impermissible Considerations

Don't base your decision on these factors.

Don't go there!

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- A student's removal from the regular education environment cannot be based on configuration of the delivery system, availability of educational or related services, availability of space, or administrative convenience.

Letter to Van Wart, 20 IDELR 1217 (OSEP 1993).

Letter to Boschwitz, 213 IDELR 215 (OSERS 1988).

- While a district may consider these factors, it may not allow such concerns to dictate the child's placement in the LRE.

Letter to Trigg, 50 IDELR 48 (OSEP 2007).

QUESTIONS?

THANK YOU!