

Inclusion, Curriculum and LRE From Both Sides of the Table

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Framing the Issue

How does an access points curriculum fit into a school district's obligation to offer education in the LRE?

How does the “high qualified teacher” requirement play into LRE decisions?

Are there legal implications to the new state definition of “inclusion?”

Case History

Parent Attorney Perspective

- Sacramento City Unified School District v. Rachel H., 14 F.3d 1398 (1994)
 - Supreme Court held that Rachel Holland, a young lady with Down Syndrome, with important cognitive delays, should be mainstreamed into a regular class even if the only benefits to her were non-academic (social) in nature



Case History

School Attorney Perspective

- Daniel R.R. v. State Board of Education, 874 F.2d 1036 (5th Cir. 1989)
 - “By creating a statutory preference for mainstreaming, Congress also created a tension between two provisions of the Act.” [LRE and FAPE]
 - “Although Congress preferred education in the regular education environment, it is also recognized that regular education is not a suitable setting for educating many [children with disabilities].”

Greer v. Rome City School District

- 10-year old with Down Syndrome
- Kindergarten: refused evaluation (concerned eligibility would drive placement)
- Took a due process hearing to get the consent
- District recommended self-contained class
- Court ruled in favor of parents
 - Must consider whether supplementary aids and services would permit “satisfactory education” in regular classroom
 - Factors to be considered
 - Compare educational benefits from regular classroom to self-contained
 - May consider effect of other children in the classroom

Inclusion Defined

- The IDEA does not mention or define “inclusion”.
- Florida Statute Section 1003.57 provides a definition for inclusion
 - “A school district shall use the term “inclusion” to mean that a student is receiving education in a general education regular class setting, reflecting natural proportions and age-appropriate heterogeneous groups in a core academic and elective or special areas within the school community; a student with a disability is a valued member of the classroom and school community; the teachers and administrators support universal education and have knowledge and support available to enable them to effectively teach all children; and a student is provided access to technical assistance in best practices, instructional methods, and supports tailored to the student’s needs based on current research.”

Impact of Definition

School Attorney Perspective

- “Natural Proportions of Students”
- “Inclusion class?”
- “Best Practices in Inclusive Education” (BPIE) assessment
 - By school districts
 - By schools
 - Part of District Policies and Procedures

Impact of Definition

Parent Attorney Perspective

- What does this accomplish? It provides a definition, which makes the school's obligation to provide for an "inclusive education" for children with disabilities. Note some of the significant issues?
 - Natural proportions
 - Age-appropriate
 - Valued member of school community
 - Best Practices
 - Access

Consent to Place in Center Schools Parent Attorney Perspective

Important because it effectively requires mutual agreement to place a child in a “center placement.”

If there is not agreement (consent) then the district must initiate due process in order to proceed with the placement

The “stay put” placement during pendency of due process is the non-center placement.

It effectively changes the “burden of proof” from the parent to the school district. This also places the burden of “going forward” with the evidence on the school district.

Consent to Place in Center Schools

School Attorney Perspective

- Must still follow federal law
- Must still provide FAPE
- Services drive placement. Placement can't dictate services

- Changes burden of proof
 - Schaffer v. Weast, 546 U.S. 49; 126 S.Ct. 528 (2005)

Assessments and Curriculum

Parent Attorney Perspective

- Modified curriculum should not equal more restrictive program
- What are the barriers?
 - Highly qualified teachers
 - Lack of training
 - Only 2 curriculum choices

Assessments and Curriculum School Attorney Perspective

- Limited resources
- Result-oriented
- Teacher evaluations
- Highly qualified

What about the reverse... student is in more restrictive program.
All team members agree on the placement. BUT student does not require a modified curriculum.

What We Can Agree Upon

- IEP Team decisions must remain student-focused
- Increased litigation does not benefit the student, family or school district
- High expectations of ESE students is a good thing
- Issues remain as to how to best serve students in the LRE while meeting all curriculum needs
- Schools may need to “think outside of the box” in seeking effective ways to make children with disabilities a genuine part of the larger school community, while still providing specialized and effective instruction to these children.