

Least Restrictive Environment

Basis

- Supreme Court in *Sheldon v. Tucker* (1960)
 - “A governmental purpose ... cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved”
 - In other words, **don't change things more than absolutely necessary**

Terminology

- **Inclusion:** placement of SWDs in general education class
 - **Full inclusion:** placement of all SWDs in general education classes all of the time
- **Mainstreaming** (and **Regular Education Initiative**, or REI): precursor to inclusion, placement of most SWDs in gen ed classes most of the time

Terminology

- Least Restrictive Environment (LRE)
 - Restrictiveness refers to degree of separation from typical peers
 - LRE may therefore be interpreted as inclusive, gen ed class
 - But **IDEA does not mandate inclusion**, but instead
 - educated with nondisabled peers to the **maximum extent appropriate**

LRE and FAPE

- Key question: What is LRE in which FAPE can be delivered?
- **FAPE takes precedence**, LRE is secondary priority
- **More restrictive placements justified when FAPE not achieved in less restrictive placement with supplementary aids and services**

Continuum of Placements

- IDEA mandates **continuum (or cascade) of placement options** in recognition that FAPE can't be achieved for all in inclusive classes
 - General education class least restrictive
 - Followed by pull out, special class, special school, institutions
- Schools cannot fail to provide appropriate placement because they don't have it available

Neighborhood Schools

- **Preference** is for **neighborhood school**, but schools can
 - Pay for services elsewhere (public or private) if not available within district
 - Hawaii pays for some students to be educated on the mainland
 - Can provide certain services only at certain schools (e.g., a low vision program)

Non-academic Programming

- LRE mandate applies to non-academic programming too
 - Potentially a **separate consideration** from academic programming
 - If a more restrictive placement is necessary for student, should still be placed with nondisabled peers if possible for lunch, recess, art, PE ...

Nondisabled Peers

- Nondisabled students have a right to (appropriate?) education as well
 - Placement is not appropriate, and therefore **not LRE, if SWD significantly impairs the education of other students**
 - Also applies to contagious health conditions

Evolution of LRE Case Law

- **Roncker (1983)** involved 9 year old with moderate ID who was to be placed in special school
- Parents sued, wanting a special class placement
- District Court found for school district
- 6th Circuit Appeals Court overturned decision and issued **Roncker portability test**
 - **Can superior features of more restrictive setting be provided in nonsegregated setting? If so, they should be.**

Daniel R. R. (1983)

- http://www.kidstogether.org/right-ed_files/daniel.htm
- 6-year old with Down syndrome who was included for half of school day
- Daniel not participating in inclusive pre-K class, so was placed full-time in special ed class
 - Interacted with nondisabled peers at recess and lunch

Daniel R. R. (1983)

- Hearing officer ruled for school, because Daniel required almost constant supervision, was disruptive, and did not benefit academically from inclusive class
- Used a **two-part test** to determine if non-inclusive placements are appropriate:
 - Can **education in gen ed class be achieved satisfactorily with supplementary aids and services, without disruption of other students' education?**

Daniel R. R. (1983)

- Used a **two-part test** to determine if non-inclusive placements are appropriate:
 - Is student included to the **extent possible** (e.g., nonacademic classes, recess, lunch)
- Circuit Court ruled that school passed both parts and met LRE mandate in special class

Oberti (1993)

- http://www.kidstogether.org/right-ed_files/daniel.htm
- Cited by many inclusion as courts favoring inclusive placements
- 7 year old with Down syndrome placed half time in special class and half time in inclusive class for kindergarten
- Rafael did not progress in inclusive placements and was aggressive to teachers and peers
- Placed in special school for first grade

Oberti (1993)

- Third Circuit Court **ruled for parents and inclusive placement**
- But they didn't rule for inclusive placements as generally better
 - Ruled that **school did not use supplementary aids and services appropriately** to determine that inclusive placements was inappropriate, thereby failing first part of Daniel R.R. test
 - Ruling was that **appropriateness of inclusive placement was not yet determined**, and that more restrictive placement was therefore not justified

Rachel H. (1994)

- 11 year old with moderate ID had been served in special classes
- School refused parent request for inclusive placement, arguing that Rachel's disability was too severe and that funding formula required she be taught by a special education teacher
 - Agreed to include her for non-academic aspects of school
- Parents unilaterally placed her in private school

Rachel H. (1994)

- http://www.kidstogether.org/right-ed_files/rachel.htm
- **Ninth Circuit Court** (which covers HI) used **4-part test** to determine LRE
 - **Educational benefits of inclusive placement** with supplementary aids and service **compared to more restrictive placement**
 - **Nonacademic benefits** of interaction with nondisabled peers
 - **Effect of student on teacher and classmates**
 - **Cost**

Rachel H. (1994)

- Court ruled for parents because
 - **District did not provide clear evidence** that segregated placement produced superior academic benefits (inclusive teacher said that Rachel progressed on IEP goals)
 - **Rachel made friends** in the inclusive class and received social benefits
 - Rachel was **generally well behaved** in inclusive class
 - Only a **part-time aide** was required

Clyde K. (1994)

- 4th Circuit Court applied 4-part Rachel H. test to case of a 15-year old with ADHD and Tourette's syndrome
- Had been included with some pull-out
- Physical assaults, obscenities/ sexually explicit remarks, harassment
- School placed him in separate school

Clyde K. (1994)

- 4 part test
 - Academic benefits: testing showed **regression** in inclusion class; and school had **provided supplementary aids and services**
 - Non-academic benefits: Student was a **social isolate** and behavior was not improving

Clyde K. (1994)

- 4-part test
 - Effect on teachers and peers: Weighed heavily by court; “**disruptive behavior** that significantly impairs the education of other students strongly suggests that a mainstream placement is no longer appropriate”
 - Cost: Not a major consideration
- Court ruled that **separate school was LRE**

Hartmann (1997)

- 11-year old with autism who was included with lots of support (full time aide, specialized training for teacher and aide, speech therapy, consultation from special education teacher)
- Because of aggressive behavior and lack of academic progress, placement changed to special class with integrated non-academics

Hartmann (1997)

- **4th Circuit Court of Appeals** reversed lower court decision and ruled for school using **3-part test** to determine when inclusion not required:
 - Not receiving **educational benefit** in inclusive class
 - Marginal benefit in inclusive class **significantly outweighed** by benefits in more restrictive placement
 - Student is a **disruptive force** in inclusive class

Conclusion

- Different Circuit Courts have similar but different standards for determining LRE
- **Courts favor, but do not mandate, inclusive placements**
 - **LRE is least restrictive environment in which FAPE can occur**
- **Unclear** whether schools have to **have attempted inclusive placement** with appropriate supports to show that it won't work