CSE Chairpersons’ Technical Assistance Meeting

Least Restrictive Environment

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The History

• As of 1970, 1 in 5 SWD attended a public school.
• In enacting IDEA’s predecessors, “Congress was concerned about the apparently widespread practice of relegating handicapped children to private institutions or warehousing them in special classes.”

LRE: What the Law Requires

• The IDEA / Federal Regulations:
  – SWD are to be educated with nondisabled students to the maximum extent appropriate.
  • Includes students in public or private institutions or other care facilities.
LRE: What the Law Requires

• The IDEA / Federal Regulations:
  – Special classes, separate schooling, or other removal of SWD from the regular educational environment may occur 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.

LRE: What the Law Requires

• The IDEA / Federal Regulations
  – Placement decisions to be in conformity with LRE:
    • Based on child’s IEP
    • As close as possible to child’s home
    • With consideration of potential harmful effects on the child and the quality of the services the child requires

LRE: What the Law Requires

• The IDEA / Federal Regulations
  – SWD may not be removed from age appropriate regular classrooms solely because of needed modifications to the general ed curriculum.
  – Each school is to have the continuum of services available. The continuum includes
    • Instruction in regular classes
    • Instruction in special education classes
    • Instruction in special schools
    • Instruction at home
    • Instruction in hospitals and institutions.
LRE: What the Law Requires

• NYS Law and Part 200
  – LRE shall
    • Provide the special education needed by the student;
    • Provide for education "to the maximum extent appropriate to the needs of the student" with other students who do not have disabilities; and
    • Be as close as possible to the student’s home.

LRE: What the Law Requires

• NYS Law and Part 200
  – "To enable SWD to be educated with nondisabled students to the maximum extent appropriate, specially designed instruction and supplementary services may be provided in the regular class, including, as appropriate, providing related services, resource room programs and special class programs within the general education classroom."

LRE: What the Law Requires

• NYS Law and Part 200
  – 200.6 Continuum of Services
    • To support education in the regular classroom
      – Transitional support services – for the teacher
      – Consultant teacher services – direct and indirect
      – Related services
      – Resource room services – to supplement regular or special class instruction
      – Integrated co-teaching services are optional
        » An ICT placement is a “service” within a general education class.
        "M.W. v. New York City Dep’t of Educ," 725 F. 3d 131 (2nd Cir. 2013).
LRE: What the Law Requires

• NYS Law and Part 200
  – 200.6 Continuum of Services
    • Outside of the regular classroom
      – Special classes
      – Home and hospital instruction
      – Private Schools
      – Residential schools.
    • Where does a BOCES class fit in?

LRE: What the Law Requires

• NYS Law and Part 200
  – 200.6 Continuum of Services
    • Size/staffing based on student need; does not define point on the continuum; LRE is not related to the number of SWD in the classroom. (M.W. v NYC Dept of Educ., 775 F.3d 131)

LRE: What the Law Requires

• LRE applies to the type of classroom setting, not the level of support the student receives within a placement, with the goal of keeping the student in the regular classroom.

LRE: What the Law Requires

• 1:1:1 placement in a public school building where the SWD has no interaction with other students is not less restrictive than placement in private school with other students. D.N. v Board of Educ. of Center Moriches UFSD, 2015 WL 5822226 (EDNY 2015)

LRE: What the Law Requires

• Nonacademic Settings
  - In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and nonacademic and extracurricular services and activities, each public agency must ensure that each SWD participates with nondisabled children … to the maximum extent appropriate to the needs of that child.
  - The public agency must ensure that each SWD has the supplementary aids and services determined by [the CSE] to be appropriate and necessary for the child to participate in nonacademic settings.

34 CFR 300.117

LRE: What the Law Requires

• Extended School Year Services
  - LRE applies to summer placements to the same extent as school year placements.
  - Need for a continuum of services, including regular "education"
    - But, no need to create a program
    - Summer recreational programs?

- T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 146 (2nd Cir 2014)
LRE: What the Law Requires

• The Courts
  • The IEP placement must be reasonably calculated to enable the child to receive a meaningful educational benefit, an opportunity for more than trivial advancement.
  • Where the nature or severity of the handicap is such that education in regular classes cannot be achieved satisfactorily, mainstreaming is not appropriate.

  – Test to reconcile LRE with “appropriate” education:
    • Can education in a regular classroom, with the use of supplemental aids and services, be achieved satisfactorily?
      - Has the school made reasonable efforts to accommodate the child in a regular classroom?
      - How do the educational benefits to the child in a regular class, with supplementary aids and services, compare to the benefits provided in a special education class?
      - What are the possible negative effects of the inclusion of the child on the other students in the class?
  – If it is determined based on prong 1 that the child cannot be satisfactorily educated full time in a regular education class, then ask...
    • Has the school mainstreamed the child to the maximum extent possible?
      - Case by case determination
      - Weigh "presumption in favor of mainstreaming ... against the importance of providing an appropriate education."
LRE: What the Law Requires

• Factors to consider when applying the Newington test:
  – “those unique benefits the child may obtain from integration in a regular classroom which cannot be achieved in a segregated environment, i.e., the development of social and communication skills from interaction with nondisabled peers.”
  
  • Oberti v. Bd. of Educ, 995 F.2d 1204, 1216 (3rd Cir 1993)

LRE: What the Law Requires

• Factors to consider when applying the Newington test:
  – A student may not be removed from education in the regular education class solely because of needed modifications in the general education curriculum.
    • But, the curriculum does not need to be modified to the extent that it is no longer recognizable.
    • What is the student’s “ability to grasp the essential elements of the regular education curriculum”?

LRE: What the Law Requires

• Factors to NOT consider when applying the Newington test:
  – It is not required that the student be able to learn at approximately the same level as the nondisabled classmates.
  – The likelihood that the student will make greater academic progress in the special education classroom, in and of itself, is not sufficient. Oberti, 995 F.2d at 1204
LRE: Best Practice Considerations

• CSE to consider LRE.
• CSE to consider supplementary aids / services.
• CSE to consider parent concerns.
• Make individualized, not predetermined, recommendation.

LRE: Best Practice Considerations

• No need for CSE to consider more restrictive placements once it determines a placement to be appropriate.

LRE: Best Practice Considerations

• IEP to indicate the extent to which the SWD will NOT participate in the regular education placement.
  – Presumption is that the student will be in the regular education.
LRE: Best Practice Considerations

• Be sure that IEP can be implemented in recommended placement.
  – A placement cannot be LRE if it lacks the services required by the IEP. G.B. v. NYC Dep’t of Education, 2015 WL 7351582 (SDNY 2015)

LRE: Best Practice Considerations

• Prior Written Notice – Options Considered and Rejected …
  – Document consideration of less restrictive placements and use of supplementary supports and services.
    • For e.g., paraprofessional; BIP; program modifications listed in IEP; parent counseling and training, ....