

## Chapter 8

# LEAST RESTRICTIVE ENVIRONMENT (LRE)

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### What This Chapter Is About

Once proper services are identified for a student with disabilities, the services must be provided in the least restrictive environment (LRE). Federal and State law require schools to serve students with disabilities in the general education setting to the maximum extent possible, even requiring schools to provide supplementary aids and services to help students benefit from those programs. Educational practices such as mainstreaming and inclusion have their legal roots in the LRE standard. In some limited situations, LRE can be read to require placement in the student's neighborhood school, with proper supports.

### Advocacy Hints in Chapter 8

- ◆ Consider student needs over cost and administrative convenience in determining the least restrictive environment (Page 2).
- ◆ Compare your child's setting to general education, not other special education programs, in deciding if it is LRE (Page 3).
- ◆ Be aware of the system pressure to place students with disabilities in less restrictive settings (Page 3).
- ◆ Ask for an assistive technology assessment to see how assistive technology can help your child move to a less restrictive environment (Page 4).
- ◆ Be careful when requesting paraprofessional assistance that the parapro doesn't become a surrogate teacher; in such situations, the school may find it easier to move your child to a separate classroom (Page 5).
- ◆ Look for unique features in your neighborhood school that make it, and only it, appropriate (Page 5).

### Least Restrictive Environment (LRE)

**Least Restrictive Environment (LRE)** is the legal term for the idea that students should be placed in the most normal and integrated settings possible. General concepts such as "mainstreaming," "inclusive education," and "universal education" are often addressed legally as LRE issues. Advances in understanding the nature of disabilities, in the expectation of full lives for people who have disabilities, and advances in teaching methods have also contributed to a changing view of best practices in education for students with disabilities, making the LRE requirement increasingly important in ensuring a quality education for these students.

► **Advocacy Hint: A student's needs come first.** Cost, administrative convenience, or the need to fill classes in established programs are not reasons for more restrictive placements. The IEPT must justify placement based on the needs of the child.

## Least Restrictive Environment Under IDEA

IDEA requires that:

[ T ]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and 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(a)(5); 34 CFR 300.114(a)(2).**

Court decisions applying to Michigan also have shed some light on the duty of schools to educate students with disabilities in the least restrictive environment. In **Roncker v. Walter, 700 F2d 1058 (6th Cir. 1983), cert.den. 464 US 864, 104 S.Ct. 196, 78 LE2d 171 (1983)**, the court required a school to serve a child with a disability in a non-segregated setting when the necessary supports could be provided to make that setting appropriate. **700 F2d at 1063.**

Recent changes to the IDEA regulations make clear that students with disabilities cannot be removed from general education simply because they need modifications to the general curriculum. **34 CFR 300.116(e).**

In 2004, the Michigan State Board of Education adopted procedures for determining LRE. The procedures require that “options be available in general education programs within our general education facilities. Further, a process... must be followed by the IEP team which includes an explanation of the extent to which the student will not participate with non-disabled students in the general education program, in extracurricular and other nonacademic activities. Education assignments are not to be based on the label describing the student's disability or the availability of programs.” In addition, the Board adopted its Universal Education vision statement in October 2005. The Universal Education Vision Statement includes a principle that “honors the rights of students to learn together.”

► **Advocacy Hint: Categorical special education classes are equally restrictive.**

In the eyes of the law, the LRE standard compares the program being considered to programs for non-disabled students. It does not use a standard which compares the program to programs for students with different disabilities. So while a child with eligibility under the cognitive impairment label may benefit from services in a resource classroom, this is not considered to be a less restrictive placement. Both CI and LD classrooms are considered to be equally restrictive when compared with general education. A court may, however, consider differences in the amount of time spent in general vs. special education settings. See **McLaughlin v. Holt Public Schools, 320 F.3d 663 (6<sup>th</sup> Cir. 2003)**.

Two other provisions in IDEA – related to funding, highly qualified teachers, and access to the general curriculum – have a systemic impact on LRE. The first bars states from adopting funding mechanisms that result in placements that violate LRE. **20 USC 1412(a)(5); 34 CFR 300.114(b)**. If, for example, a state rule provided more money to schools for segregated programs, such a rule would violate IDEA and would be subject to challenge under the complaint process. (See Chapter 10.)

The second requires schools to offer all students access to the general curriculum according to standards set by the state. **34 CFR 300.39(b)(3)**. That means, in Michigan, that special education classes must offer students with disabilities access to curriculum that addresses the grade level content expectations (up to grade 8) and the high school graduation standards (grades 9-12). A parent whose student attends a program not meeting these standards may challenge that practice through either a hearing or complaint (see Chapter 10).

► **Advocacy Hint: What affects the system affects individuals.** The two provisions of IDEA discussed above make it harder for school districts to maintain segregated programs. The state cannot have a financial system that favors such programs, and programs must provide instruction linked to the general curriculum.

Placement should begin in general education. The law presumes that children can go to school with their non-disabled peers and that the school must give good reason for a more restrictive program. Here are the steps in analyzing LRE:

<b>LRE CONTINUUM OF SERVICES</b>	
First step:	Decide appropriate programs and services for an individual student.
Next step:	Decide placement beginning with general education. Placement must <b>not</b> be limited by program and services currently available.
If general education is not appropriate:	State reasons why options accepted or rejected. Explore use of supplemental aids and services in general education.
If general education with supplemental aids and services is not appropriate:	State reasons why options accepted or rejected. Explore placement in categorical special education classes.
If placement in categorical special education classes is not appropriate:	State reasons why options accepted or rejected. Explore placement in home or hospital/institutional instruction.

Many IEPs treat the requirement for considering general education first with cursory comments like “not appropriate at this time,” or “not enough support.” Parents and advocates should focus more effort on this discussion in the IEPT to clarify and note why it is not possible to provide “enough support” in a less restrictive setting. When discussing this issue, a parent might ask the following questions:

- ◆ Are there goals (such as socialization with non-disabled peers) which require the school to place my child in a less restrictive setting?
- ◆ Can the special education program meet my child’s academic goals? (This is especially important when a child is placed in a separate class due to behavior problems or physical disabilities.)
- ◆ What services are needed to help my child stay in a less restrictive classroom?
- ◆ What skills are necessary before my child will be able to leave a restrictive setting? Is he being taught these skills in the classroom curriculum or do his goals address these skills?

► **Advocacy Hint: Look at assistive technology.** IDEA requires that the student’s need for assistive technology, (devices such as computers and wheelchairs), that help replace the body parts or functions affected by the disability, must be considered at each IEPT meeting. Assistive technology can often allow a student to be placed in a less restrictive environment by allowing the student to be more independent. It should be considered in any discussion of LRE.

A parent may ask the school to evaluate for additional services to improve the chances of moving to or keeping a less restrictive placement. Often, if a school does not cooperate in modifying the general education setting, an independent educational evaluation (IEE) might be necessary. (See Chapter 4)

► **Advocacy Hint: Avoid the “para trap.”** Paraprofessionals are often invaluable members of a student’s IEP team. Be careful, however, in specifying the required duties of a parapro who will provide support in general education. If a parapro is being asked to provide support to allow a child to benefit from the instruction in a general classroom, that is an appropriate role. In some cases, however, the parapro is expected to provide substitute programming or instruction, tasks he or she may not be qualified to do. By demonstrating the need for different or separate instruction, you may unwittingly be documenting the school’s case for moving the student to a separate program.

### **Least Restrictive Environment Under Section 504**

Section 504 also mandates education in the least restrictive environment and states that, if students are placed away from a regular school, the facilities, equipment, and programs available in that placement must be comparable to those available in the regular school. **34 CFR 104.34.**

### **LRE and the Neighborhood School**

Does LRE require schools to educate a student with a disability in his or her neighborhood school? The IDEA regulations state that a student’s placement should be “as close as possible to ... home” and that, unless the IEP requires otherwise, the student be allowed to attend the school that he or she would attend if not disabled. **34 CFR 300.116.** Despite this regulatory language, most courts have decided that LRE does not mean the neighborhood school. “[W]e do not interpret this section [34 C.F.R. § 300.116] as imposing upon a school board the obligation to place a child in his base school. Rather, this section requires only that a school board take into account, as one factor, the geographical proximity of the placement in making these decisions....” **Hudson v. Bloomfield Hills Public Schools, 910 F.Supp. 1291 (E.D.Mich. 1995).**

► **Advocacy Hint: Make your neighborhood school unique.** The school district may be required to serve your child in your neighborhood school if it has unique services or characteristics that are necessary to meet your child’s IEP goals. For example, if part of your child’s IEP requires interaction with siblings or neighborhood friends, the neighborhood school may be uniquely situated to meet that goal. Or if there are specific ancillary services such as therapy services, social work services or specialized transportation at your neighborhood school, it may be solely equipped to serve your child.