

## Chapter 7

### 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 7

- ◆ Consider student needs over cost and administrative convenience in determining the least restrictive environment (Page 1).
- ◆ 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 3).

#### 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 Individualized Educational Program Team (IEP Team) must justify placement based on the needs of the child.

The Individuals with Disabilities Education Act (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).**

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)**. 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 F.2d 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 F.2d at 1063**. Though the IDEA has a strong preference for placement in general education, **Roncker** states that a school may segregate a student, meaning place the child in a classroom with only students with disabilities, if the student would not benefit from regular education *at all*. Other **Roncker** exceptions include allowing segregated placement if benefits of special education far outweigh those of general education. The last exception is when a student is a disruptive force in the general education classroom. Barring any of those three scenarios, school districts and parents should work together to find out how the student can be included in the general setting to the “maximum extent appropriate.” *Id.*

In **L.H. et al. v. Hamilton Co. Dep’t of Educ., 900 F.3d 779 (6th Cir. 2018)**, the court affirmed the importance of LRE. The student in **L.H.** was able to make some progress in his first three years (kindergarten and two first grades) of elementary schooling. However, because he was not able to “master” grade-level concepts, the district provided work that was neither tied to state standards nor at grade-level and later through the IEP process forced a placement change to a segregated setting. In response, the parents filed for due process and placed L.H. at a private Montessori school.

In appealing its losses at the due process and district court levels, the school district made several arguments. One argument that the court in **L.H.** turned away was that mainstreaming is about physical location because “special-education students are so different from their classmates socially and intellectually, they are necessarily ‘isolated’ from them even though they are physically in the same room.” The court found this argument “wrong,” “bizarre,” and “worrisome” and concluded that the argument “inadvertently supports L.H.’s parents’ experts’ opinions that [district] teachers and staff reject mainstreaming because they do not understand it, do not believe in it, and need extensive training on why it is valuable and how to do to it.” The court found that LRE is a “*non-academic* restriction or control on the IEP—separate and different from the measure of substantive educational benefits.” This means that the school district still needs to put children in the general education setting with special education services and supports to the greatest extent possible.

► **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 students without disabilities. 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 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 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 8.)

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 8.)

► **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 all 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 peers who are not disabled and that the school must give good reason for a more restrictive program.

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: Look at assistive technology.** IDEA requires that a student’s need for assistive technology (AT) — devices such as computers and wheelchairs that help replace the body parts or functions affected by a disability — must be considered at each IEP Team meeting. AT can often allow a student to be placed in a less restrictive environment by allowing the student to be more independent. AT should be considered in any discussion of LRE. If you believe that AT may benefit your child, you may consider requesting an AT evaluation.

## **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)**.

## **LRE 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**.