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## Special Education Administrators' Understanding and influences on Least Restrictive Environment within The Seventh Circuit Court System

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## ABSTRACT

### SPECIAL EDUCATION ADMINISTRATORS' UNDERSTANDING AND INFLUENCES ON LEAST RESTRICTIVE ENVIRONMENT WITHIN THE SEVENTH CIRCUIT COURT SYSTEM

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Northern Illinois University, 2021  
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Special education services provided in public schools today are rooted in the federal law passed in 1975 known as the Education for All Handicapped Children Act (EAHCA). Since 1975 this law has undergone revisions, now known as the Individuals with Disabilities Education Act (IDEA), but the law provided the foundation to guarantee all public-school children the right to a free and appropriate public education in the “least restrictive environment (LRE). The federal court system served as an avenue for parents and school officials to settle disagreements around IDEA.

The objective of this study was to determine Illinois special education administrators' understanding of the IDEA's LRE mandate and their attitudes towards inclusion. This quantitative study was conducted using an online survey format. The survey was electronically emailed to public school special education administrators across the state of Illinois. Using the Principals and Inclusion Survey (PIS) as a foundation, which was originally intended for the general education principal audience, the Environment Dynamics Survey targeted the special education administrator audience.

The majority of participants could identify the key phrases defining LRE and viewed themselves as have sufficient knowledge and understanding of LRE. The majority of participants did not know which federal court had jurisdiction over cases in Illinois. Overall, it was found that behavior was the most significant factor impacting LRE in the participants' classrooms.

Using the student's individual needs first to drive goal objectives that then serve as a springboard for discussion of services and then delivery location can be best practice to avoid LRE missteps. Illinois special education administrators do not need to be lawyers, but they should have a means by which they follow Seventh Circuit decisions. Overall, Illinois special education administrators have a favorable view of the inclusion of students with disabilities.

NORTHERN ILLINOIS UNIVERSITY  
DEKALB, ILLINOIS

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SPECIAL EDUCATION ADMINISTRATORS' UNDERSTANDING AND INFLUENCES  
ON LEAST RESTRICTIVE ENVIRONMENT WITHIN THE SEVENTH CIRCUIT  
COURT SYSTEM

BY  
TIFFANY FREY

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A DISSERTATION SUBMITTED TO THE GRADUATE SCHOOL  
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FOR THE DEGREE  
DOCTOR OF EDUCATION

DEPARTMENT OF LEADERSHIP EDUCATION, PSYCHOLOGY AND FOUNDATIONS

Doctoral Director:  
Kelly H. Summers

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Last but not least, my family. My husband, Nick: I am grateful for your support through this very long process. We dated, got married, built a house, had a baby, and moved to another house during this time. Your patience and support were constant through this process. To my son, Alexander: you became a part of this final leg of the journey. Too young to understand but knew I needed to go “work” in my office. To my brother, Nick, who has always shown me the world is full of great things to learn and study. Thank you to my parents, who instilled the value of education from a very young age. Also, thank you for your babysitting services to give me time to work.

## DEDICATION

To my loving husband, Nick Frey

## TABLE OF CONTENTS

	Page
LIST OF TABLES .....	viii
Chapter	
1. INTRODUCTION .....	1
Early History .....	1
Compulsory Attendance Laws .....	4
Federal Court System .....	5
Problem Statement.....	6
Purpose of the Study.....	7
Significance of the Study.....	8
Research Questions .....	8
Definition of Terms .....	9
2. LITERATURE REVIEW .....	14
Policy, Case Law, and Evidence-Based Practice That Influence Educational Placement .....	14
The Federal Government and Disability .....	25
Early Legislative Reforms.....	25
Education for All Handicapped Children Act of 1975.....	28
<i>Hendrick Hudson District Board of Education v. Rowley (1982)</i> .....	35
Federal Circuit Court LRE Tests.....	39

Chapter	Page
Sixth Circuit.....	40
Fifth Circuit .....	43
Ninth Circuit.....	47
Fourth Circuit .....	50
Seventh Circuit Interpretation of LRE Cases .....	55
<i>Lachman v. Illinois State Bd. of Ed.</i> , 852 F.2d 290 (7 <sup>th</sup> Cir. 1988).....	58
<i>Monticello Sch. Dist. No. 25 v. George L.</i> , 102 F.3d 895 (7th Cir. 1996).....	61
<i>Sch. Dist. of Wisc. Dells v. Z.S.</i> , 295 F. 3d 671 (7th Cir. Wis. 2002).....	65
<i>Beth B. v. Van Clay</i> , 282 F. 3d. 493 (7th Cir. 2002) .....	70
<i>Alex R. v. Forrestville Valley Cmty. Unit Sch. Dist.</i> , 375 F.3d 603 (7th Cir. 2004) .....	76
<i>Ross v. Bd. of Educ. of Twp. High Sch. Dist. No. 211</i> (7 <sup>th</sup> Cir. 2007).....	79
Inclusion Research.....	89
3. METHODOLOGY .....	93
Purpose of the Study.....	93
Research Questions .....	93
Participants .....	93
Instrumentation.....	94
Research Design.....	101
Pilot Study .....	101
Procedure .....	103
4. RESULTS.....	104
Research Question 1 .....	106



Chapter	Page
Wording of LRE Within the Law .....	106
Sufficient Knowledge of LRE .....	107
LRE and the Supreme Court.....	108
Explanation of LRE .....	109
Theme 1: Providing Access to the General Education Curriculum .....	110
Theme 2: Access to the General Education Setting as Much as Possible.....	110
Theme 3: Access to Nondisabled Peers.....	111
Theme 4: Receiving Appropriate Supports and Services.....	111
Other LRE Definitions .....	111
Research Question 2 .....	112
Attitude Toward Inclusion.....	114
<i>T</i> -Test Results .....	132
5. DISCUSSION .....	135
Special Education Administrators' Knowledge of LRE .....	135
Links to Existing Research and Practical Implications .....	136
Knowledge of Court System and Attitudes .....	138
Links to Existing Research and Practical Implications .....	140
Study Limitations .....	141
Recommendations for Further Study.....	142
Guidance for Illinois Special Education Administrators.....	143
Conclusion .....	144

APPENDIX: ENVIRONMENT DYNAMICS SURVEY ..... 146

## LIST OF TABLES

Table	Page
1. Formal Job Title of LEAs .....	105
2. Participants' Employment .....	105
3. Reported Descriptive Information About School Setting .....	106
4. Belief of Sufficient Knowledge .....	107
5. The United States Supreme Court Has Ruled on the LRE Provisions of IDEA .....	108
6. Identified LRE Themes .....	109
7. Which Federal Court Has Jurisdiction over Your School District? .....	113
8. Only Teachers with Extensive Special Education Experience Can Be Expected to Deal with Students with Severe/Profound Disabilities in a School Setting .....	115
9. Schools with Both Students with Severe/Profound Disabilities and Students Without Disabilities Enhance the Learning Experiences of Students with Severe/Profound Disabilities .....	115
10. Students with Severe/Profound Disabilities Are Too Impaired to Benefit from the Activities of a Regular School .....	116
11. A Good Regular Educator Can Do a Lot to Help a Student with a Severe/Profound Disability .....	116
12. In General, Students with Severe/Profound Disabilities Should Be Placed in Special Classes/Schools Specifically Designed for Them .....	117
13. Students Without Disabilities Can Profit from Contact with Students with Severe/Profound Disabilities .....	117
14. Regular Education Should Be Modified to Meet the Needs of All Students, Including Students with Severe/Profound Disabilities .....	118

Table	Page
15. It Is Unfair to Ask/Expect Regular Teachers to Accept Students with Severe/ Profound Disabilities .....	118
16. No Discretionary Financial Resources Should Be Allocated for the Integration of Students with Severe/Profound Disabilities .....	119
17. It Should Be Policy/Law That Students with Severe/Profound Disabilities Are Integrated into Regular Educational Programs and Activities .....	119
18. Students' Abilities to Keep Up with the Curriculum .....	120
19. Modifying Curriculum .....	120
20. Meeting Social/Emotional Needs .....	121
21. Grading .....	121
22. Individual Student Behavior Disrupting the Learning of Others .....	121
23. Ability to Provide Appropriate Accommodation within General Education Curriculum .....	122
24. Collecting Data/Documentation .....	122
25. Professional Development for General Education Teachers on IEPs and Disabilities.....	123
26. Additional Teacher Assistants/Paraprofessionals .....	123
27. Behavior Support .....	124
28. Increased Consultative Time with Special-Education-Related Service Staff .....	124
29. Increased Time for Teacher Planning to Differentiate Instruction .....	124
30. Increased Time for Small-Group Instruction with IEP Students .....	125
31. Training for General Education Teachers on How to Implement IEP Accommodations .....	125
32. Training for Building Leadership (i.e., Principal, Assistant Principal, Dean) .....	125

Table	Page
33. Additional Curricular Resources to Implement a Modified Curriculum .....	126
34. Autism .....	127
35. Deaf and Blind .....	127
36. Deafness .....	128
37. Emotional Disturbance .....	128
38. Hearing Impairment .....	129
39. Multiple Disabilities .....	129
40. Developmental Delay .....	130
41. Orthopedic Impairment .....	130
42. Other Health Impairment .....	130
43. SLD .....	131
44. Speech .....	131
45. Traumatic Brain Injury .....	131
46. Visual Impairment .....	132
47. Correlation .....	133
48. <i>T</i> Test Comparing Those Who Correctly Identified the Seventh Circuit Those Who Did Not.....	134
49. <i>T</i> Test Comparing Those Who Obtain Legal Knowledge Passively vs. Actively.....	134
50. <i>T</i> Test Comparing Those Who Had a Close Relative with a Disability vs. Those Who Did Not.....	134

## CHAPTER 1

### INTRODUCTION

#### Early History

Major changes noted in American history from the 1800s to the 1900s include urbanization, industrialization, and immigration. During this time of change,,,,,, large cities such as Boston, New York, Philadelphia, and Baltimore saw rapid growth. This created a more urban focus by the 1900s. The American economy shifted from agrarian to industrial. Immigration spanned across the globe with increased growth from Canada, China, and all over Europe. These changes impacted all members of society, but most notably, the changes impacting children can still be seen today through state compulsory attendance laws.

A more urban industrial society brought attention to urban issues such as poverty, working wages, crime, and health problems. A call for a more efficient government programming came from 1880 to 1920, known as the Progressive Era. During the Progressive Era, government programs and regulation were expanded. As a result of more urban living arrangement, society was now living in close proximity to people with intellectual disabilities.<sup>1</sup> Prior to this time in history, people with disabilities were traditionally ignored and isolated.<sup>2</sup> The newly perceived social problem of intellectual disabilities became more magnified in the highly populated city centers, and society called for a solution.

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<sup>1</sup> At this time in history the term used to describe intellectual disability was mental retardation. I will use the term intellectual disability in place of mental retardation.

<sup>2</sup> Robert L. Osgood, *THE HISTORY OF SPECIAL EDUCATION: A STRUGGLE FOR EQUALITY IN AMERICAN PUBLIC SCHOOLS*, 6, (2008).

At that time society viewed disabled people, specifically those with intellectual disabilities, as a societal liability.<sup>3</sup> Institutions were used as a social solution to manage people challenged with intellectual disabilities.<sup>4</sup> The societal response to control the perceived problem of intellectual disabilities was the eugenics movement.<sup>5</sup> Eugenists believed it was other humans' jobs to control "the crop of feeble-minded which our misguided indifference has permitted to grow."<sup>6</sup> At the time, it was thought that an intellectual disability was an inherited trait, which resulted in the accepted practice of sterilizing intellectually disabled people. Society felt this was a solution to help stop people from passing those "unacceptable traits" on to the next generation.<sup>7</sup> This movement was commonplace across the United States and even upheld by the highest court in the land in the court case reviewed below.

A 1927 disability rights case, *Buck v. Bell*, reached the United States Supreme Court.<sup>8</sup> This case involved Carrie Buck, an 18-year-old "feeble-minded" woman who was committed to a State of Virginia institution.<sup>9</sup> At the time of the case, Carrie had an intellectually disabled illegitimate child of her own, and Carrie's mother was also an intellectually disabled inmate at the same state institution.<sup>10</sup> The state institution sought to sterilize Carrie by removal of her fallopian tubes.<sup>11</sup> A 1924 Virginia commonwealth statute allowed institutionalized patients to be sterilized "for the best interests of the patient and society."<sup>12</sup>

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<sup>3</sup> Margret A. Winzer, *THE HISTORY OF SPECIAL EDUCATION FROM ISOLATION TO INTEGRATION* 280 (1993).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Buck v. Bell*, 274 U.S. 200 (1927).

<sup>9</sup> *Id.* Carrie Buck, her mother, and Buck's daughter were all categorized by the Commonwealth of Virginia as "feeble minded."

<sup>10</sup> *Id.* at 205.

<sup>11</sup> *Id.* at 201. Salpingectomy is a surgery in which a female's abdominal cavity is opened and then the fallopian tubes are cut, causing sterilization.

<sup>12</sup> *Id.* at 206.

Carrie's family appealed the institution's decision to the Virginia Supreme Court where the sterilization ruling was supported.<sup>13</sup> Thereafter, the United States Supreme Court reviewed the case and affirmed Carrie's sterilization.<sup>14</sup> The Supreme Court applied rational basis review to determine if the institution's sterilization request was related to a legitimate governmental concern. Supreme Court Justice Oliver Wendell Holmes, rationalized the Court's ruling' stating, "... [I]n order to prevent our being swamped with incompetence... [i]t is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind."<sup>15</sup> Holmes summarized societal views regarding disabled people by stating, "Three generations of imbeciles are enough."<sup>16</sup> This United States Supreme Court decision supported the continued practice of state institutional sterilization. Between 1927 and 1972 Virginia commonwealth law allowed 8,300 institutionalized patients to be sterilized.<sup>17</sup> Across the United States more than 65,000 sterilization surgeries were performed in 32 states from 1907 until 1979.<sup>18</sup> Sterilization was society's response to controlling the gene pool as well as controlling the cost of institutionalizing disabled people.<sup>19</sup> The *Buck* decision only addressed a small population of disabled people, those housed in state institutions; the remaining disabled people were living in urban and rural communities around the United States. The shift to a more industrial society

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<sup>13</sup> *Id.* at 201.

<sup>14</sup> *Buck*, 274 U.S. at 207.

<sup>15</sup> Stephen Monroe, "Reasonable Measures": Giving "Due Deference" to School Boards' Decisions in Cases Involving the Individuals with Disabilities Education Act, 5 SEVENTH CIR. REV. 581, 585 (2010) (citing *Buck*, 274 U.S. at 207).

<sup>16</sup> *Buck*, 274 U.S. at 207.

<sup>17</sup> Paul A. Lombardo, *Three Generations, No Imbeciles: New Light on Buck v. Bell*, 60 N.Y.U. L. REV. 30, 31 (1985).

<sup>18</sup> Paul A. Lombardo, *Disability, Eugenics, and the Culture Wars*, 2 ST. LOUIS U. J. HEALTH L. & POL'Y 57, 65 (2008).

<sup>19</sup> *Id.* at 62.



began to shine a light on the issues surrounding the lack of access to public education for people with disabilities.

### Compulsory Attendance Laws

The United States Constitution, the supreme law of the land, does not guarantee the provision of public education; rather, the Constitution's silence on education leaves it to individual states to determine educational programming.<sup>20</sup> In 1840, Rhode Island passed the first compulsory attendance laws.<sup>21</sup> Other states began to follow suit by enacting compulsory attendance laws: Massachusetts in 1852 and thereafter, by 1918, all states had adopted compulsory attendance laws.<sup>22</sup> Even with compulsory attendance laws in effect, disabled students were often still excluded from public education until the mid-1970s.<sup>23</sup>

Civil rights legislation in the 1950s offered a springboard for providing access to public schools for students with disabilities starting in the 1970s. Meredith and Underwood (as cited in Crockett and Kauffman) noted special education legislation was a result of the general education system failing to address the "instructional needs of exceptional learners."<sup>24</sup> Through the creation of the Education for All Handicapped Children Act of 1975 (EAHCA), Congress created a "semi-official constitution" outlining the requirements of an Individualized Education Plan (IEP) for all public school students with disabilities. Through the years, the EAHCA has gone through

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<sup>20</sup> Mitchel L. Yell, David Rogers & Elisabeth Lodge Rogers, *The Legal History of Special Education: What a Long, Strange Trip It's Been*, 19 REMEDIAL & SPECIAL EDUC. 219, 219 (1998).

<sup>21</sup> *Id.*

<sup>22</sup> John LaNear & Elise Frattura, *Getting the Stories Straight: Allowing Different Voices to Tell An 'Effective History' of Special Education Law in the nited States*, 2 EDUC. & THE L. 87, 91 (2007).

<sup>23</sup> *Id.*

<sup>24</sup> Jean B. Crockett & James M. Kauffman, THE LEAST RESTRICTIVE ENVIRONMENT, ITS ORIGINS AND INTERPRETATIONS IN SPECIAL EDUCATION 130 (1999).

various revisions, resulting in the current statute used today: The Individuals with Disabilities Education Act (IDEA).

### Federal Court System

The actual implementation of the IDEA is left in the hands of local school officials to create and implement programming for all students eligible for special education services. As with any federal statute, additional guidance for implementation is provided as lawsuits make their way through the court system. The results of those court rulings provide further explanation and at times establish tests to be used when implementing the statute. Any dispute surrounding the IDEA would be resolved using the federal court system. This is important to note; since the IDEA is a federal statute, it must be addressed via the federal court system, not the state court system. There are three main levels within the federal court system. The first level is called district courts, also called trial courts. There are 94 trial courts in the United States. Any disputes surrounding the implementation of special education programming provided through the IDEA would begin at the district-court level. Decisions from district courts are appealed to United States circuit courts. There are 12 federal circuits that divide the country into regions. Illinois is in the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit Court also addresses cases from Wisconsin and Indiana. Finally, the United States Supreme Court hears appeals from the 12 circuit courts.

Rulings from the United States Supreme Court regarding the implementation of the IDEA are binding in all 12 circuit courts, which in turn would apply to all school districts across the United States of America. Any rulings from United States Court of Appeals for the Seventh Circuit would only be binding to all school districts in Illinois, Wisconsin, and Indiana. This is

important to note: for example, decisions from the Fourth Circuit would not be binding on school districts in Illinois. Only those rulings from the Supreme Court and the Seventh Circuit Court of Appeals are binding in Illinois. This dissertation will only focus on those court cases that would have direct influence on Illinois school districts.

### Problem Statement

Through the creation and revision of the IDEA, Congress has provided all public educators in the United States a road map for the provision of special education services for all students with disabilities. The congressional expectation can be summarized as requiring all public schools to provide all students with a free and appropriate public education (FAPE) in the least restrictive environment (LRE) at no additional expense to the parent. The United States Supreme Court has ruled on cases pertaining to various components of the IDEA. These rulings provide school officials with further guidance on the provision of services for students with disabilities.

However, since the implementation of the IDEA in 1975, there has been no further guidance or ruling from the United States Supreme Court pertaining to the implementation of the least restrictive environment (LRE) mandate, this is a problem for those trying to implement the policy. The IDEA statute provides no test or rule to apply when determining the LRE. Absence of the Supreme Court ruling on the IDEA LRE mandate, school officials must look to their respective circuit court for guidance, in Illinois that would be the Seventh Circuit Court of Appeals. LRE tests have been created and are currently being used in the Fourth, Fifth, Sixth, and Ninth Circuit Courts. Those tests are not binding on school districts within the Seventh Circuit, that is, school districts in Illinois, Wisconsin, and Indiana. The Seventh Circuit is not

unique when it comes to the topic of LRE; in fact, the court has made ruling on numerous cases surrounding LRE, yet the Seventh Circuit Court has stopped short of creating its own LRE test or adopting an LRE test from another circuit. The lack of a uniform LRE test leaves school officials in Illinois in a tough situation, allowing for vast interpretation of the original congressional intent. This lack of guidance leaves school officials without a roadmap, resulting in uneven application of the provision of LRE across the state of Illinois. I am completing this study to provide school officials in Illinois with guidance for implementing the LRE provision of the IDEA. Detailed guidance for implementation will provide all students with disabilities in Illinois equal access to the LRE.

#### Purpose of the Study

The purpose of my study is to examine the understanding and application of the LRE provision of the IDEA in schools across Illinois from the perspective of administrators. My study employed a quantitative survey of Illinois special education school administrators. This population was selected because special education administrators participate in numerous IEP meetings throughout the school and/or school district and thus have a large impact on the overall programming of special education students.

#### Significance of the Study

This study is significant as the legislature continues to make changes in policies impacting the provision of educational services. It is important to examine the implementation of these policies. Illinois is required to collect special education data annually as part of their State Performance Plan (SSP) and Annual Performance Report (APR) to the Office of Special

Education. Illinois collects data on 20 indicators varying widely on special education, including LRE, graduation rates, transition, due process and parent involvement. Two of the 20 indicators address LRE: Indicator 5-Participation/Time in General Education Setting (LRE) and Indicator 6-Preschool Children in General Education Setting. These indicators take the pulse of special education in the state of Illinois and are reported to the federal government annually. All 20 indicators are also reported back to each individual school district. When local school districts fail to meet required benchmarks on any indicator, various forms of corrective action may be required. Corrective action can range from writing a corrective action plan to Illinois State Board of Education intervention. Having the Illinois State Board of Education involved in local programming can be problematic for all district stakeholders. Understanding and correctly applying the congressional intent of the IDEA is not only helpful for the students we serve, but it also can prevent intrusive action by the Illinois State Board of Education (ISBE).

### Research Questions

The following research questions serve as the foundation in guiding this study:

1. What is Illinois special education administrators' understanding of the LRE provision outlined in the IDEA?
2. Is there a relationship between special education administrators' knowledge of the federal court system and their attitudes towards inclusion?

To understand and correctly apply congressional intent of the IDEA, a deep analysis into the history of individuals with disabilities rights must be examined. Understanding the early pivotal court cases that began in the early 1900s bringing the needs of individuals with disabilities to the forefront, lays the foundation for the creation of the IDEA in 1975. The implementation of the

IDEA was inconsistent at first, which has then resulted in more court cases around the county to more clearly define congressional intent. A review of the history of cases will be further reviewed in Chapter 2. Additionally, an in-depth review of cases specifically impacting Illinois school administrators will be reviewed.

### Definition of Terms

- Compulsory Attendance: All children ages 6-17 years old are required by law to attend school in Illinois.
- Least Restrictive Environment (LRE): To 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 special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.<sup>25</sup>
- Free Appropriate Public Education (FAPE): Special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program.<sup>26</sup>

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<sup>25</sup> 20 U.S.C. § 1412(a)(5)(A) (2004).

<sup>26</sup> 20 U.S.C. § 1401(3)(A)(9) (2004).

- Individual Education Plan (IEP): An individual plan designed to meet the unique learning needs of the student with an identified disability. The plan must include specific goals (both academic and functional) that allow the student to make forward progress in the general education curriculum. The plan must also outline specific special education and related services needed to support the student.<sup>27</sup>
- Related Services: Support services that assist the student with an identified disability to benefit from special education. Related services can include but are not limited to: transportation, speech language services, occupational therapy, physical therapy, counseling, and health services.<sup>28</sup>
- Disability Categories and Definitions:<sup>29</sup>

## Autism

Autism is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance.

## Deaf-Blindness

Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

## Deafness

Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

## Emotional Disability

Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and

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<sup>27</sup> 34 C.F.R. § 300.320(a)

<sup>28</sup> 34 C.F.R. § 300.34(a)

<sup>29</sup> 34 C.F.R. § 300.8(c)

to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

#### Hearing Impairment

Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

#### Intellectual Disability

Intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. The term "intellectual disability" was formerly termed "mental retardation."

#### Multiple Disabilities

Multiple disabilities means concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

#### Orthopedic Impairment

Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital



anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

#### Specific Learning Disability

(i) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

#### Speech or Language Impairment

Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

#### Traumatic Brain Injury

Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are

congenital or degenerative, or to brain injuries induced by birth trauma.

#### Visual Impairment

Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

## CHAPTER 2

### LITERATURE REVIEW

#### Policy, Case Law, and Evidence-Based Practice That Influence Educational Placement

Compulsory attendance laws beginning in 1840 excluded students with disabilities. Parents sought access for their students with disabilities using the legal system starting in the early 1900s. In *Beattie v. Board of Education*, a Wisconsin school district denied a student access to school based on his disability, a decision in direct conflict with compulsory attendance laws.<sup>30</sup> In 1919 *Beattie* reached the Supreme Court of Wisconsin. Merritt Beattie, a 13-year-old, had completed first through fifth grades at Antigo, his local neighborhood school.<sup>31</sup> Merritt had average intelligence and kept pace with the general education classroom.<sup>32</sup> However, he suffered from a birth defect that caused a form of paralysis.<sup>33</sup> The paralysis impacted his ability to control his body movements; he did not have normal use of his hands and feet.<sup>34</sup> Merritt's paralysis caused uncontrollable facial contortions and drooling. His rate and tone of speech were significantly impacted, making him difficult to understand.<sup>35</sup> School officials determined his "ailment produces a depressing and nauseating effect upon the teachers and school children," and his condition required more of the teacher's time and was noted to be distracting to his peers.<sup>36</sup>

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<sup>30</sup> *Beattie v. Bd. of Educ.*, 169 Wis. 231 (1919).

<sup>31</sup> *Id.* at 233.

<sup>32</sup> *Id.*

<sup>33</sup> Today Merritt's condition would be identified as form of cerebral palsy.

<sup>34</sup> *Beattie*, 169 Wis. at 234.

<sup>35</sup> *Id.* at 235.

<sup>36</sup> *Beattie*, 169 Wis. 231.

According to school officials his placement in the general education classroom impacted the overall “progress of the school”; therefore, he was excluded from the public school.<sup>37</sup> School officials changed Merritt’s educational placement to a separate day school, a school designed “for the instruction of deaf persons or persons with defective speech.”<sup>38</sup> Merritt’s parents disagreed with this separate educational placement outside of his neighborhood school. At parental request, the local school board reviewed school officials’ decision to exclude Merritt. At the Board of Education meeting, all board members with the exception of one voted to exclude Merritt from attending his neighborhood school. The Board of Education upheld school officials’ decision to deny Merritt public school enrollment.<sup>39</sup> Merritt’s parents asked for review of the decision from the state superintendent of public instruction, but their request was denied.<sup>40</sup> Merritt’s parents appealed the school officials’ decision to the municipal court of Langlad County.<sup>41</sup> The municipal court reviewed the case and found Merritt should be placed back in Antigo, his neighborhood school.<sup>42</sup>

The Board of Education in Antigo appealed the decision to the Supreme Court of Wisconsin.<sup>43</sup> The court stated that decisions of local school boards could not be interfered with unless the board actions were illegal or unreasonable.<sup>44</sup> The board rationalized the decision to exclude Merritt stating his presence “was detrimental to the best interest of the school.”<sup>45</sup> Judge Owen noted that providing an individual students access to public education should not outweigh

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<sup>37</sup> *Id.* at 235.

<sup>38</sup> *Beattie*, 169 Wis. 231.

<sup>39</sup> *Id.* at 235.

<sup>40</sup> *Beattie*, 169 Wis. 231.

<sup>41</sup> *Id.* at 235.

<sup>42</sup> *Id.*

<sup>43</sup> *Beattie*, 169 Wis. 231.

<sup>44</sup> *Id.* at 232.

<sup>45</sup> *Id.* at 234.

the overall general welfare of the entire student body as a whole.<sup>46</sup> The court determined the Board of Education acted legally, citing it was the school district's responsibility to maintain the school day as outlined in State Statute 41.01.<sup>47</sup> The court observed the Board of Education had reviewed Merritt's enrollment in the general education setting and his overall impact on the general welfare of other students and based upon these observations concluded he should be placed in a separate educational placement.<sup>48</sup> The Supreme Court of Wisconsin reversed the municipal court of Langlad County decision finding in favor of a separate educational placement.<sup>49</sup> The Wisconsin legislature passed a state compulsory attendance law and required local school districts to service children between ages 4 and 20 years without charging tuition.<sup>50</sup> Wisconsin compulsory attendance law required all children to attend school except in cases like Merritt's, where his presence "was detrimental to the best interest of the school."<sup>51</sup> The court's ruling was in direct conflict with the state compulsory attendance law.<sup>52</sup> This isolated case in Wisconsin could be found in pockets around the United States. It was not until after the Civil Rights Movement that the rights of students with disabilities gained widespread judicial momentum.

In the civil rights cases, the parents of African American students filed lawsuits in four different states alleging their children were being denied admission to the local neighborhood public schools based on the color of their skin.<sup>53</sup> The separate segregation lawsuits filed in Kansas, South Carolina, Virginia, and Delaware were consolidated upon reaching the United

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Beattie*, 169 Wis. at 235.

<sup>50</sup> *Id.* at 236.

<sup>51</sup> *Id.* at 235.

<sup>52</sup> *LaNear & Frattura*, *supra* note 22.

<sup>53</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

States Supreme Court.<sup>54</sup> While African American students did have access to schools, they were required to attend segregated Black schools. The lawsuits alleged a violation of the students' equal protection rights as outlined in the Fourteenth Amendment of the U.S. Constitution.<sup>55</sup>

Three of the four lower courts denied children enrollment in the local neighborhood school based on the "separate but equal" doctrine established in the landmark case *Plessy v. Ferguson* decided 58 years prior.<sup>56</sup> In 1896, the *Plessy* Court rejected the argument that the governmentally enforced racial separation of railroad passenger cars resulted in "a badge of inferiority" for "colored" races. *Plessy* resulted in a separate but equal doctrine being the law of the land until the 1954 *Brown* decision.<sup>57</sup> In overruling *Plessy*'s separate but equal doctrine, the unanimous *Brown* Court observed that separating Black children "from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."<sup>58</sup> The Court ruled separate schools for African American children, even if the separate schools were designed equally in all tangible ways, violated the students' constitutional rights.<sup>59</sup>

*Brown* addressed the rights of a disenfranchised group of students, i.e., Black children. The unanimous *Brown* Court expressly stated that "separate but equal" had no place in public education.<sup>60</sup> *Brown* declared education was "perhaps the most important function of state and local governments."<sup>61</sup> At the time of *Brown*, the needs of special education students on a whole

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<sup>54</sup> *Id.* at 486.

<sup>55</sup> *Brown*, 347 U.S. 483. The Constitution of the United States Amendment 14.

<sup>56</sup> *Plessy v. Ferguson*, 163 U.S. 537 (1896).

<sup>57</sup> See Jon G. Crawford and Linda J. O'Neill, *A Mere Footnote? An American Dilemma and Supreme Court Jurisprudence*, PEABODY JOURNAL OF EDUCATION 86:5, 506, 510 (2011; citing *Plessy*, 163 U.S. at 551).

<sup>58</sup> *Brown*, 347 U.S. at 494.

<sup>59</sup> *Id.* at 492.

<sup>60</sup> *Id.* at 495.

<sup>61</sup> *Id.* at 493.

had yet to be addressed by either Congress or the courts. In 1954 it would have been hard to predict the impact *Brown* could have for students with disabilities. At the time, many students with disabilities were not even provided “separate but equal” programming, rather minimal programming or no programming at all. *Brown* provided the catalyst for change for students with disabilities. The *Brown* decision was a spur for special education litigation. Following *Brown*, the parents of disabled students began to bring litigation against local school officials for excluding and/or segregating their children based on disability.<sup>62</sup> Even though *Brown* was decided within the context of racial inequality, this landmark decision provided the parents of special education children hope for the future educational opportunities for all students, including those with disabilities.

In *Brown*'s wake, Pennsylvania parents of children challenged by intellectual disabilities successfully used the court system to acquire expanded basic educational rights for students with disabilities. In 1971, the parents of 13 intellectually disabled children joined forces with the Pennsylvania Association for Retarded<sup>63</sup> Children (PARC) and filed a class-action suit against the Commonwealth of Pennsylvania, Secretary of Welfare, State Board of Education and 13 local school districts.<sup>64</sup> The lawsuit alleged the parents of intellectually disabled children were statutorily excluded access to Pennsylvania's public school system.<sup>65</sup> The parents asserted their children's exclusion from the public schools violated the U.S. Constitution's Equal Protection Clause of the Fourteenth Amendment and the Due Process Clause of the Fifth Amendment.<sup>66</sup> In *Brown*, parents successfully brought suit arguing the equal protections guaranteed by the

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<sup>62</sup> *Mills v. Bd. of Educ.*, 348 F. Supp. 866, 868 (D. DC 1972).

<sup>63</sup> “Mentally retarded” was the term used at that time; in present day, the term is “intellectually disabled.”

<sup>64</sup> Yell, Rogers & Lodge Rogers, *supra* note 20.

<sup>65</sup> *PARC*, 343 F. Supp. 279, 282 (E. Pa. 1972).

<sup>66</sup> *Id.* at 283.

Fourteenth Amendment were denied when African American students were refused enrollment in their local public school due to the color of their skin.<sup>67</sup> Parents of students with disabilities used this same connection to the U.S. Constitution.

In 1965, it was estimated that while 46,000 Pennsylvania school-age children with intellectual disabilities were enrolled in public schools, another 70,000 to 80,000 students with intellectual disabilities between the ages 5 to 21 were not enrolled in any type of educational programming.<sup>68</sup> Pennsylvania school officials relied upon four state statutes<sup>69</sup> to deny public school enrollment to children with intellectual disabilities. School officials could deny students enrollment if a school psychologist determined a student was uneducable and untrainable.<sup>70</sup> Another statute denied enrollment to any student who had not yet attained the mental age of 5 years old.<sup>71</sup> Additionally, two other statutes provided a loophole within the state compulsory attendance law – students were excused from compulsory attendance rules when a mental clinic or school psychologist certified the student would not profit from further public school attendance.<sup>72</sup> Additionally using the commonwealth’s compulsorily attendance age of 8 to 17 years, school officials also reduced length of services for intellectually disabled students, if they were receiving any services at all.<sup>73</sup>

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<sup>67</sup> Daniel H. Melvin II, *The Desegregation of Children with Disabilities*, 44 DEPAUL L. REV. 599, 606 (1995).

<sup>68</sup> *PARC*, 343 F. Supp. at 296.

<sup>69</sup> *Id.* at 282. See Statutes: (1) 24 Purd. Stat. § 13-1375 exclusion from public school when student is found to be uneducable and untrainable; (2) 24 Purd. Stat. § 13-1304 postpone admission indefinitely to school for students who have not attained the mental age of five years; (3) 24 Purd. Stat. § 13-1330 exemption to compulsory attendance laws when the school psychologist finds the child unable to benefit school; (4) 24 Purd. Stat. § 13-1326 defines compulsory attendance age as 8 to 17 year. In practice it was used to postpone admission to school until 8 years or to eliminate students from the public school at age 17.

<sup>70</sup> *PARC*, 343 F. Supp. at 282 (citing 24 Purd. Stat. § 13-1375).

<sup>71</sup> *Id.* (citing 24 Purd. Stat. § 13-1304).

<sup>72</sup> *Id.* (citing 24 Purd. Stat. § 13-1330).

<sup>73</sup> *Id.* (citing 24 Purd. Stat. § 13-1326).



The parents' class-action lawsuit was filed in the United States District Court for the Eastern District of Pennsylvania. The lawsuit alleged the rights of children challenged by intellectual disabilities were violated in the following ways: First, the automatic exclusion of disabled students based upon a determination the students were uneducable and untrainable without any supporting evidence violated the student's equal protection rights.<sup>74</sup> Second, disabled students' exclusion from public education or placement within restrictive environments without prior notice or hearing violated their due process rights guaranteed under the United States Constitution.<sup>75</sup>

Through the use of extensive expert testimony, the parents proved intellectually disabled students could benefit from public education programming.<sup>76</sup> The *PARC* court determined no rational basis existed for excluding intellectually disabled students. The court reasoned "mentally retarded persons are capable of benefiting from a program of education and training; the greatest number of retarded persons, given such education and training, are capable of achieving self-sufficiency, and the remaining few, with such education and training, are capable of achieving some degree of self-care."<sup>77</sup> The court also found excluding students based on misidentification or restrictive placement without providing parent prior notice violated disabled students' due process rights.<sup>78</sup>

The three-judge federal district court decision resulted in a consent decree. The consent agreement stipulated Pennsylvania could no longer exclude intellectually disabled children from

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<sup>74</sup> *Id.* at 283.

<sup>75</sup> *Id.*

<sup>76</sup> Alan Gartner & Dorothy Kerzner Lipsky, *Beyond Special Education: Toward a Quality System for All Students*, 57 HARV. EDUC. REV. 367, 369 (1987).

<sup>77</sup> *PARC*, 343 F. Supp. at 307.

<sup>78</sup> Melvin, *supra* note 67, at 607.

public school.<sup>79</sup> The decree provided access to the public schools for every intellectually disabled student ages 6-21 to “free” and “appropriate”<sup>80</sup> public programming.<sup>81</sup> The agreement also outlined the first and most detailed due process protections provided to students with disabilities.<sup>82</sup> The 23-step procedure outlined due process protections<sup>83</sup> included prior written notice, an opportunity to request a hearing, legal representation, access to student records, and the parental right to present evidence.<sup>84</sup> Though the specific components of an Individual Education Plan (IEP) had yet to be determined, the *PARC* decision provided disabled students access and began laying the groundwork for parent procedural safeguards still used today. The court approved the parties’ consent agreement, resulting in settlement of the case.<sup>85</sup>

In 1972, as a result of the *PARC* litigation and settlement, all Pennsylvania students with disabilities between the ages 6-21 were provided access to a free public education.<sup>86</sup> *PARC* helped set the stage for federal legislation designed to provide students with disabilities access to public education. This decision underscored the rights of students challenged by disabilities to receive a “free” and “appropriate” education and due process protections. *PARC* also laid the foundation for students to receive an education in the least restrictive environment (LRE). At that time LRE and FAPE had yet to be defined, but *PARC* guaranteed access to a public education in a setting with nondisabled peers.

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<sup>79</sup> *PARC*, 343 F. Supp. at 302.

<sup>80</sup> *Id.* Training appropriate to his learning capacities.

<sup>81</sup> *Id.* at 307.

<sup>82</sup> Jeffrey J. Zettel & Joseph Ballard, *The Education for All Handicapped Children Act of 1975 PL 94-142: Its History, Origins, and Concepts*, 16 *J. of Educ.* 5, 16 (1979).

<sup>83</sup> *Id.*

<sup>84</sup> *PARC*, 343 F. Supp. at 304-305.

<sup>85</sup> *Id.* at 285.

<sup>86</sup> *Id.* at 288.

In 1972 another class-action lawsuit addressed the needs of disabled students. In *Mills v. Board of Education*, Peter Mills's parents joined the parents of six other special education students in filing a class action lawsuit against the Board of Education for the District of Columbia. The lawsuit alleged D.C. school officials were improperly excluding students with disabilities from school, without providing alternative programming paid for at the public expense.<sup>87</sup> It was further asserted these "exceptional" children were either excluded from school or reassigned to new placements without due process of law.<sup>88</sup> The students' "exceptional needs" included intellectual disabilities, behavior problems, emotional disabilities and hyperactivity.<sup>89</sup> During the 1971-1972 school year, an estimated 12,340 disabled students within the District of Columbia Public Schools boundaries were provided no educational programming.<sup>90</sup> The class action lawsuit filed in the U.S. District Court for the District of Columbia alleged school officials' actions violated both the Equal Protection Clause of the Fourteenth Amendment and the Due Process Clause of the Fifth Amendment.<sup>91</sup>

During proceedings school officials admitted it was their duty to provide services to each disabled student.<sup>92</sup> Admittedly school officials understood these "services" included specific instructional programming, procedural due process and periodic reviews of the student's programming.<sup>93</sup> However, school officials argued it was too costly to educate disabled students. School officials defended their denial of services by arguing that in order to fund a full array of special education services, Congress would need to either appropriate millions of dollars for

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<sup>87</sup> *Mills v. Bd. of Educ. of D.C.*, 348 F. Supp. 866 (D.D.C. 1972).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 868.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Mills*, 348 F. Supp. at 871.

<sup>93</sup> *Id.*

special education programming or school officials would need to cease funding many existing general educational programs.<sup>94</sup> The U.S. district court rejected school officials' claim that insufficient funds obviated their duty to provide "publicly supported educational services."<sup>95</sup> The court explained, if sufficient funds were not available for all needed programming, the existing funds would need to be distributed among all programs, so not a single child was denied access to a public school education.<sup>96</sup>

The U.S. District Court for the District of Columbia ruled in favor of the students. The *Mills* court found school officials' practices violated the students' due process and equal protection rights. The court found equal protection violations, citing the *Brown* decision, "In these days, it is doubtful that any child may reasonably be expect to succeed in life if he is denied the opportunity for education. *Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms*" (emphasis added).<sup>97</sup> Disabled students, no matter the severity of their disability, could not be excluded from public education.<sup>98</sup> The *Mills* court also found school officials' due process violations denied access to "publicly supported education to which they are entitled," being expelled from school or being subjected to educational programming changes without prior notice.<sup>99</sup>

The judgment ensured disabled students access to a free education that couldn't be denied based on "a rule, policy, or practice of the Board of Education of the District of Columbia."<sup>100</sup>

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<sup>94</sup> *Id.* at 876.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Mills*, 348 F. Supp. at 876 (citing *Brown*, 347 U.S. at 493).

<sup>98</sup> *Mills*, 348 F. Supp. at 878.

<sup>99</sup> *Id.* at 875.

<sup>100</sup> *Id.* at 878.

The *Mills* court outlined extensive notice requirements, specifically detailing five explicit requirements to be included in the notice. One component of the notice required school officials to “inform the parent or guardian of the right to object to the proposed action at a hearing before the Hearing Officer.”<sup>101</sup> The hearing requirements included parental rights to legal representation, to review school records and to present evidence and testimony.<sup>102</sup> Pending the hearing, school officials could not change the disabled students’ placement; today this is known as “stay put.”<sup>103</sup> *Mills* laid the foundation for special education protections that remain in place today. These enduring protections include written notice, hearing, and the right to representation by legal counsel.<sup>104</sup>

Even though *PARC* and *Mills* were district court decisions, they marked a milestone for special education litigation.<sup>105</sup> These cases clearly proclaimed discrimination based on a student’s disability would no longer be allowed. The rights of disabled students were the focus of at least 46 lawsuits in 28 states in the three years following the *PARC* and *Mills* decisions.<sup>106</sup> These cases would serve as the foundation for Congress to write the first large disability rights legislation.

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<sup>101</sup> *Id.* 882-883.

<sup>102</sup> *Id.* at 880.

<sup>103</sup> *Id.* at 882.

<sup>104</sup> *Mills*, 348 F. Supp. at 880-883.

<sup>105</sup> LaNear & Frattura, *supra* note 22, at 95.

<sup>106</sup> *Id.*

## The Federal Government and Disability

### Early Legislative Reforms

Following the *PARC*<sup>107</sup> and *Mills*<sup>108</sup> decisions, the rights of disabled students continued to gain attention from politicians.<sup>109</sup> It was reported that by 1972, nearly 70% of states mandated some type of public education for disabled students.<sup>110</sup> Thereafter in 1975, Congress enacted federal legislation, the Education for All Handicapped Children Act of 1975 (EAHCA)<sup>111</sup> guaranteeing disabled students the right to a free appropriate public education.<sup>112</sup> During the 1960s, the federal government was minimally involved with education policy and had yet to specifically address the topic of disabled students.<sup>113</sup> When President John F. Kennedy took office, the federal governmental role around disability issues increased.<sup>114</sup> President Kennedy created the President's Panel on Mental Retardation in 1962 and the following year created the Division of Handicapped Children and Youth within the U.S. Department of Health, Education, and Welfare.<sup>115</sup> Kennedy's efforts during his short tenure were not lost in the transition to President Lyndon B. Johnson. Congress passed the Elementary and Secondary Education Act of 1965 (ESEA)<sup>116</sup> as part of Johnson's "Great Society" initiative to address educational

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<sup>107</sup> *PARC*, 343 F. Supp. 279.

<sup>108</sup> *Mills*, 348 F. Supp. 866.

<sup>109</sup> Melvin, *supra* note 67, at 617.

<sup>110</sup> Zettel & Ballard, *supra* note 82 at 10 (citing A. Abeson, *Movement and Momentum: Government and the Education of Handicapped Children*, 39 EXCEPTIONAL CHILDREN, 63 (1972)).

<sup>111</sup> Education for All Handicapped Children Act of 1975, Pub. L. No. 94 § 142, 89 Stat. 773 (1975).

<sup>112</sup> Robert T. Stafford, *Education for the Handicapped: A Senator's Perspective*, 3 VT. L. REV. 71 (1978).

<sup>113</sup> Harvey Kantor, *Education, Social Reform, and the State: ESEA and Federal Education Policy in the 1960s*, 100 AM. J. EDUC. 47, 47 (1991).

<sup>114</sup> Osgood, *supra* note 2, 100.

<sup>115</sup> Winzer, *supra* note 3, at 366.

<sup>116</sup> Elementary and Secondary Education Act of 1965, Pub. L. No. 89 § 10, 79 Stat. 27 (1965).

inequities.<sup>117</sup> The ESEA addressed the needs of economically disadvantaged students through Title I.<sup>118</sup> Following the ESEA's passage, Congress began discussing whether financial assistance should also be provided for other at-risk students, not just those with low socioeconomic status.<sup>119</sup> The ESEA was amended numerous times to become more inclusive of specific types of disadvantaged students, including those with disabilities.<sup>120</sup> The ESEA's first amendment provided funding to those disabled students who were receiving services in state-run schools or facilities.<sup>121</sup> In 1966, the ESEA's second amendment provided grant money to assist states with "initiation, expansion, and improvement of programs and projects for the education of handicapped children at the preschool, elementary, and secondary level."<sup>122</sup> The 1966 amendment also included the creation of the National Advisory Committee on Handicapped Children and the Bureau for Education and Training of Handicapped Children.<sup>123</sup> Each Congressional ESEA amendment produced more specificity and details regarding the education of students with disabilities.

The ESEA's reach extended to include students with disabilities in 1969 with an amendment creating a separate law, the Education of the Handicapped Act (EHA).<sup>124</sup> The EHA combined all federal laws into a single statute. The EHA provided funds to implement programming for students with disabilities at the local school district level.<sup>125</sup> The EHA also

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<sup>117</sup> Osgood, *supra* note 2, at 101.

<sup>118</sup> Janet Y. Thomas & Kevin P. Brady, *The Elementary and Secondary Education Act at 40: Equity, Accountability, and the Evolving Federal Role in Public Education*, 29 REV. RES. EDUC. 51, 51 (2005).

<sup>119</sup> *Id.* at 52 (citing S.J. Stein, *THE CULTURE OF EDUCATION* (2004)).

<sup>120</sup> Thomas & Brady, *supra* note 118.

<sup>121</sup> Schools, construction in disaster areas., Pub. L. No. 89 § 313, 79 Stat. 1158 (1965).

<sup>122</sup> Elementary and Secondary Education Act of 1965, Pub. L. No. 89 § 750, 80 Stat. 1204(F)(a) (1965).

<sup>123</sup> Elementary and Secondary Education Amendments of 1966, Pub. L. No. 89 § 750, 80 Stat. 1207 (1965).

<sup>124</sup> Elementary and Secondary Education Assistance Programs, Pub. L. No. 91 § 230, 84 Stat. 601 (1970).

<sup>125</sup> *Id.*

provided a legal definition of a learning disability.<sup>126</sup> In addition to creating the ESEA and the Act's various amendments throughout the early 1970s, Congress also *passed Section 504 of the Rehabilitation Act* in 1973.<sup>127</sup> This civil rights law was the first piece of federal legislation addressing the rights of disabled people, both adults and children.<sup>128</sup> Section 504 stated, "No otherwise qualified handicapped individual in the United States,... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."<sup>129</sup> The Act lacked detailed specificity for implementation and provided no federal funding.<sup>130</sup> Section 504 impacted the larger disability arena by requiring reasonable accommodations for disabled people from any entity receiving federal money.<sup>131</sup> The details of Section 504 regarding disabled student educational rights would be subsequently detailed in the Education for All Handicapped Children Act of 1975.<sup>132</sup>

One final EHA amendment occurred in 1974 in what many described as an early legislative warning prior to enactment of the Education for All Handicapped Children Act.<sup>133 134</sup> As a result of recent federal court decisions such as *PARC* and *Mills*, the Education Amendments of 1974 affirmed disabled students' right to an education.<sup>135</sup> As a result of this Act, for the first time each state was required to submit a plan ensuring all disabled students were provided access

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<sup>126</sup> Elementary and secondary education assistance programs, Pub. L. No. 91 § 230, 84 Stat. 601(15) (1970).

<sup>127</sup> Rehabilitation Act of 1973, Pub. L. No. 93 § 112, 87 Stat. 504 (1973).

<sup>128</sup> Melvin, *supra* note 67, at 612.

<sup>129</sup> Rehabilitation Act of 1973, Pub. L. No. 93 § 112, 87 Stat. 504 (1973).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> Education for All Handicapped Children Act of 1975, Pub. L. No. 94 § 142, 89 Stat. 773 (1975).

<sup>133</sup> Zettel & Ballard, *supra* note 82, at 11.

<sup>134</sup> Education for All Handicapped Children Act of 1975, Pub. L. No. 94 § 142, 89 Stat. 773 (1975).

<sup>135</sup> Zettel & Ballard, *supra* note 82, at 11.



to a public education.<sup>136</sup> The final amendment made steady progress forward for the rights of disabled students, but it still did not compel the states to provide services.

### Education for All Handicapped Children Act of 1975<sup>137</sup>

Federal legislation reached a turning point on November 19, 1975; with the passage of the Education for All Handicapped Children Act (EAHCA).<sup>138</sup> The Education for All Handicapped Children Act of 1975, also known as Public Law 94-142, guaranteed the right for all handicapped children covered by the EAHCA to receive to a free, appropriate, public education in the least restrictive environment. According to Senator Robert T. Stafford, a sponsor of the EAHCA, “This federal statute [is] best characterized as one which provides a minimum floor of collective responsibility for the Nation as a whole.”<sup>139</sup> Many of the policies and procedures outlined in the EAHCA were not revolutionary; rather, Congress solidified many of the standards previously established by the courts and other public bodies.<sup>140</sup> In 1975, following the *PARC* and *Mills* decisions, a total of 46 lawsuits addressing the rights of students with disabilities to receive an education had been either decided or filed.<sup>141</sup> The *PARC* and *Mills* decisions were a primary impetus for the rights of handicapped children. In 1975 Congress responded to this momentum with passage of the Education for All Handicapped Children Act of 1975.<sup>142</sup>

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<sup>136</sup> *Id.*

<sup>137</sup> Education for All Handicapped Children Act of 1975, Pub. L. No. 94 § 142, 89 Stat. 773 (1975).

<sup>138</sup> *Id.* (current version at 20 U.S.C. §§ 1400-1461 (2006)).

<sup>139</sup> Stafford, *supra* note 112, at 75.

<sup>140</sup> Zettel & Ballard, *supra* note 82.

<sup>141</sup> Melvin, *supra* note 67, at 608.

<sup>142</sup> Colley, Relan, *The Education for All Handicapped Children Act (EHA): A Statutory and Legal Analysis*, 10 J.L. & EDUC. 136 (1981).

Congress intended to ensure four key goals were incorporated in the process of making educational services available to handicapped children. First, Congress intended to ensure all students with disabilities would have access to a public education that included special education and related services.<sup>143</sup> The Act was also designed to ensure both student and parental rights were protected.<sup>144</sup> In drafting the Act, Congress also intended to provide financial assistance to states and local school districts for the implementation of special education programming.<sup>145</sup> Finally, Congress drafted the Act in a way that forced states and local school districts to review the effectiveness of programs provided to disabled students.<sup>146</sup> Senator Stafford, a sponsor of the Act, viewed the EAHCA as a way to guarantee that previously denied disabled children were provided a free, appropriate, public education in the least restrictive environment.<sup>147</sup> From Stafford's perspective the EAHCA was to ensure disabled students were no longer treated as an invisible class.<sup>148</sup> The Act was not designed to dictate to school leaders what an appropriate program should look like; instead, it was designed to provide guidance.

The EAHCA expressly addressed the educational needs of disabled school-age students as well as their parents' rights to be active participants in the educational decision-making process.<sup>149</sup> As a result of passing the EAHCA, the federal government assumed an active role in holding states responsible for providing special education services to students with disabilities.<sup>150</sup>

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<sup>143</sup> Education for All Handicapped Children Act of 1975, Pub. L. No. 94 § 142, 89 Stat. 773, 775 (1975).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> Stafford, *supra* note 112.

<sup>148</sup> *Id.* at 72.

<sup>149</sup> *Id.* at 75.

<sup>150</sup> Zettel & Ballard, *supra* note 82.

The Act ensured financial assistance to those states who implemented the EAHCA's major components.<sup>151</sup>

Each state's initial compliance step began with the identification of disabled students who were eligible for special education services. Congress estimated one million disabled students were completely excluded from the public education system prior to the EAHCA's enactment.<sup>152</sup> States were required to implement a system for identifying and evaluating any school-age child suspected to be challenged by a disability.<sup>153</sup> The EAHCA guided states to first identify disabled students who were not yet receiving any educational services and then to focus attention on disabled students who were already receiving substandard services.<sup>154</sup>

Through the evaluation and identification process, the EAHCA required states to create and implement an individualized education program (IEP).<sup>155</sup> School officials were directed not to create the plan in isolation but instead were directed to utilize a team comprised of a school district representative, teacher(s), parent(s), and (when appropriate) the student to create an IEP detailing specific information about the student's educational needs.<sup>156</sup> The IEP team was also required to review the child's present levels of performance and write annual goals and short-term objectives for guiding the formulation of the student's special education program.<sup>157</sup> It was not sufficient for IEP teams to merely identify the student's deficits through the formulation of goals; the EAHCA also instructed the IEP team to be thoughtful in creating goals through the use of objective criteria and to determine a means for measuring the student's progress on identified

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<sup>151</sup> Education for All Handicapped Children Act of 1975, Pub. L. No. 94 § 142, 89 Stat. 773 (1975).

<sup>152</sup> *Id.*

<sup>153</sup> 20 U.S.C. § 1412(2)(C) (1975).

<sup>154</sup> 20 U.S.C. § 1412(5)(B) (1975).

<sup>155</sup> 20 U.S.C. § 1401(19) (1975).

<sup>156</sup> *Id.*

<sup>157</sup> 20 U.S.C. § 1401(19)(A)(B) (1975).

goals.<sup>158</sup> The specific educational services the child was to receive were to be detailed in the IEP.<sup>159</sup> These services were to include direct specialized instruction<sup>160</sup> as well as related services.<sup>161</sup> Related services were defined as services needed to assist the student in benefiting from specific special education services and included supports such as transportation, speech pathology, physical therapy, and occupational therapy.<sup>162</sup> The duration of each service was also to be listed in the IEP.<sup>163</sup> When determining these required services, the IEP team was required to review the amount of time the student would be able to participate in the general education setting with the student's nondisabled peers.<sup>164</sup> IEP teams were required to meet at least once per year to determine whether the individual student had made progress toward achieving his or her identified goals and objectives.<sup>165</sup>

Key topics outlined in EAHCA included: "child find" duties, free appropriate public education (FAPE), setting forth a student's right to have his or her educational services provided within a least restrictive environment (LRE), and procedural safeguards.<sup>166</sup> First, the EAHCA clearly established school officials' duty to be vigilant in identifying children who might be eligible for special education services. Through a process called "child find," school officials were held responsible for locating and evaluating any students who were potentially eligible for

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<sup>158</sup> 20 U.S.C. § 1401(19)(E) (1975).

<sup>159</sup> 20 U.S.C. § 1401(19)(C) (1975).

<sup>160</sup> Specialized instruction is instruction delivered by a certified special education teacher.

<sup>161</sup> 20 U.S.C. § 1401(17) (1975).

<sup>162</sup> *Id.*

<sup>163</sup> 20 U.S.C. § 1401(19)(D) (1975).

<sup>164</sup> 20 U.S.C. § 1401(19)(C) (1975).

<sup>165</sup> 20 U.S.C. § 1414 (a)(5) (1975).

<sup>166</sup> 20 U.S.C. § 1412(a)(5)(A) (2004). "To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and 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."

special education and related services.<sup>167</sup> The EAHCA directed school officials to find those students who qualified for services and to provide special education and related services to all disabled students residing within a school district's geographic boundaries without regard to the severity of the child's disability.<sup>168</sup> Finding all students who were eligible for special education services was the first step toward ensuring children with disabilities received special education services with their nondisabled peers in a least restrictive environment (LRE). The second key concept outlined in EAHCA required all disabled students to be provided a free appropriate public education (FAPE). Congress clearly stated parents of the disabled students would not be required to pay for special education services and these services were to be provided at public expense.<sup>169</sup> All services were to be listed in the IEP and implemented under school officials' supervision.<sup>170</sup>

The third key concept outlined in EAHCA was the requirement to educate disabled students in the least restrictive environment (LRE). EAHCA did not provide school officials with a formula for calculating the amount of time a disabled student should spend in the general education setting. Instead, the EAHCA required school officials to ensure procedures were in place to educate disabled students to the maximum extent appropriate alongside their nondisabled peers.<sup>171</sup> Congress's preference was to keep students with disabilities in the general education environment. The EAHCA mandated that "special classes, separate schooling, or other removal of handicapped children from the regular education environment [should only occur] when the nature or severity of the handicap [is] such that education in regular classes with the

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<sup>167</sup> 20 U.S.C. § 1414(a)(1)(A) (1975).

<sup>168</sup> *Id.*

<sup>169</sup> 20 U.S.C. § 1401(18) (1975).

<sup>170</sup> *Id.*

<sup>171</sup> 20 U.S.C. § 1412(5)(B) (1975).

use of supplementary aids and services [could not] be achieved satisfactorily.”<sup>172</sup> When outlining these LRE requirements, Congress did not use the terms “mainstreaming” or “inclusion.” The EAHCA’s specific language did not require school officials to educate all disabled students in the general education setting.<sup>173</sup> According to Senator Stafford,<sup>174</sup> Congress never intended to dictate the educational setting, but instead left that decision to the IEP team with the goal of including disabled students when appropriate with nondisabled students.<sup>175</sup>

The fourth key concept outlined in EAHCA, procedural safeguards, described the legal protections provided to both students and parents.<sup>176</sup> Critics of the Act voiced concerns regarding school districts actually following through with the services promised in the IEP.<sup>177</sup> EAHCA guaranteed parental involvement in the process from initial identification, evaluation, and continuing through the creation and implementation of services outlined in the IEP.<sup>178</sup> At any point during the process if a parent believed school officials were denying their child access to a free appropriate public education (FAPE), the parent could initiate legal action using the Act’s impartial due process hearing procedure.<sup>179</sup> During the due process hearing, parents were guaranteed the right to be represented by legal counsel of their choice.<sup>180</sup> The EAHCA provided an avenue for the courts to make final decisions regarding whether each disabled child’s special

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<sup>172</sup> *Id.*

<sup>173</sup> Zettel & Ballard, *supra* note 82 (citing Ballard, J. *Public Law 94-142 and Section 504: Understanding What They Are and Are Not*, Council for Exceptional Children (1978).

<sup>174</sup> Senator Robert T. Stafford, sponsor of the Education for All Handicapped Children Act of 1975.

<sup>175</sup> Stafford, *supra* note 112, at 76 .

<sup>176</sup> 20 U.S.C. § 1415(a) (1975).

<sup>177</sup> Stafford, *supra* note 112, at 79, Boston, *Education Policy and the Education for All Handicapped Children Act (P.L. 94-142)*, in Institute for Educational Leadership (1977).

<sup>178</sup> 20 U.S.C. § 1415(b)(1)(E) (1975).

<sup>179</sup> 20 U.S.C. § 1415(2) (1975).

<sup>180</sup> 20 U.S.C. § 1415(d)(1) (1975).

education program conformed to the Act's requirement and to ensure the parental rights outlined in the Act were not violated.<sup>181</sup>

The Act's procedural safeguards included more protections for parents than the formal due process hearing procedure. For example, parents were to be provided 10-day written notice before school officials effectuated a change in the child's educational placement.<sup>182</sup> This notice ensured students were not placed in more restrictive placement, a possible violation of LRE, without parental knowledge and input. Parents were also guaranteed the right to review any of their child's special education records.<sup>183</sup> Finally, whenever possible, all rights outlined in the Act's procedural safeguards were to be provided to parents in their native language.<sup>184</sup> In 1990, the EAHCA was reauthorized as the Individuals with Disability Education Act (IDEA).<sup>185</sup> The reauthorization had little impact on the requirements of LRE that had been previously laid in EAHCA. Changes were made in regards to the term "handicap": IDEA replaced the term with "disability" and the term "disabled children" was replaced with "children with disabilities."<sup>186</sup>

Researchers Crockett and Kauffman noted the passage EAHCA and reauthorization of IDEA did not instantly create special education programs across the country that met the statutory definition of educating students in the least restrictive environment (LRE).<sup>187</sup> The researchers noted that program implementation varied vastly from state to state. Local schools defined LRE in a variety of ways, including "placement in public schools," "mainstreaming," and "the place where parents think the child will be best educated." The varying interpretation of

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<sup>181</sup> 20 U.S.C. § 1415(b)(1)(C)(i) (1975).

<sup>182</sup> 20 U.S.C. § 1415(d) (1975).

<sup>183</sup> 20 U.S.C. § 1415(b)(1)(A) (1975).

<sup>184</sup> 20 U.S.C. § 1415(b)(1)(D) (1975).

<sup>185</sup> Monroe, *supra* note 15, at 593.

<sup>186</sup> *Id.*

<sup>187</sup> Crockett & Kauffman, *supra* note 24, at 133.

the congressional intent played out in the courts across the country. One key term that continues to appear when discussing LRE is “mainstreaming.” In general, mainstreaming is used to describe the general education classroom where students with disabilities are placed both for social and/or academic instruction alongside those students without disabilities.<sup>188</sup> Even though the term “mainstreaming” is not used or defined in the IDEA, it has become a common term used by the educational community, including hearing officers, to discuss LRE.<sup>189</sup>

*Hendrick Hudson District Board of Education v. Rowley (1982)*<sup>190</sup>

Shortly after Congress passed the Education for All Handicapped Children Act, the Supreme Court was asked to interpret the Act’s phrase, “free and appropriate public education” (FAPE). In 1982, Amy Rowley’s parents brought suit against Central School District in New York alleging school officials had denied Rowley her right to a free and appropriate public education (FAPE). *Rowley* was the Supreme Court’s first interpretation of the EAHCA. Rowley was a deaf student who was an excellent lip reader and had minimal residual hearing.<sup>191</sup> Rowley’s kindergarten year began in general education kindergarten at Furnace Woods School with no supports or services.<sup>192</sup> During kindergarten it was determined Rowley would use an FM wireless hearing aid.<sup>193</sup> This device would amplify the voices of the teacher and students.<sup>194</sup> In February of her kindergarten year, a two-week trial of a sign language interpreter was initiated.

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<sup>188</sup> *Id.* at 27.

<sup>189</sup> *Id.*

<sup>190</sup> *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982).

<sup>191</sup> *Id.* at 184.

<sup>192</sup> *Id.*

<sup>193</sup> *Rowley v. Hendrick Hudson Dist. Bd. of Educ.*, 483 F. Supp. 528, 530 (S.D.N.Y. 1980).

<sup>194</sup> *Hendrick Hudson Dist. Bd. of Educ.*, 458 U.S. at 184.



After this trial period, school officials, based in part on the interpreter's input, decided Rowley's learning needs did not require this support.<sup>195</sup>

Then, school officials evaluated Rowley following EAHCA's requirements to determine her eligibility for special education services.<sup>196</sup> She was found eligible for special education. To begin first grade, an IEP was written and her placement remained at Furnace Woods School in general education first grade.<sup>197</sup> Services outlined in the IEP included the continued use of the FM wireless hearing aid, speech therapy three hours per week, and specialized instruction from the "deaf teacher" one hour daily.<sup>198</sup> Parent's also requested a sign language interpreter be added to the IEP for all academic classes.<sup>199</sup> School officials determined that she did not require the interpreter in first grade.<sup>200</sup> School officials consulted with the school district's Committee on the Handicapped (COH). The COH recommended Amy's IEP should include continued use of an FM wireless hearing aid, deaf tutoring for one hour each day, and speech therapy services for three hours per week.<sup>201</sup> The COH's recommendations did not include interpreter services.<sup>202</sup>

The parents alleged school officials' refusal to provide Rowley with a sign language interpreter for her academic classes constituted a violation of the EAHCA's FAPE mandate.<sup>203</sup> The parents' experience as deaf citizens themselves provided them with a unique view and insight into Rowley's specific needs as a hearing-impaired student.<sup>204</sup> The parents believed the EAHCA had paved the way for their daughter to have access to educational opportunities similar

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<sup>195</sup> *Rowley*, 483 F. Supp. at 530.

<sup>196</sup> *Hendrick Hudson Dist. Bd. of Educ.*, 458 U.S. at 184.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.* at 185.

<sup>199</sup> *Rowley*, 483 F. Supp. at 531.

<sup>200</sup> *Hendrick Hudson Dist. Bd. of Educ.*, 458 U.S. at 184.

<sup>201</sup> *Rowley*, 483 F. Supp. at 531.

<sup>202</sup> *Id.*

<sup>203</sup> *Hendrick Hudson Dist. Bd. of Educ.*, 458 U.S. 176.

<sup>204</sup> Amy June Rowley, *Rowley Revisited: A Personal Narrative*, 37 J.L. & EDUC. 311, 313 (2008).

to those provided to her peers with unimpaired hearing.<sup>205</sup> The parents' perception of educational opportunities similar to those provided to her general education peers included Rowley receiving hearing interpreter services in her general education classes.<sup>206</sup>

The parents and school officials' disagreement over the need for interpreter services resulted in an administrative hearing. The hearing officer determined Rowley did not require an interpreter's services to receive a FAPE.<sup>207</sup> The decision was then appealed to the New York Commissioner of Education, where the hearing officer's decision was affirmed.<sup>208</sup> The parents appealed again and the United States District Court for the Southern District of New York found school officials had denied Rowley a FAPE by not providing a sign language interpreter.<sup>209</sup> On appeal, the U.S. Court of Appeals for the Second Circuit affirmed the lower court decision by affirming the conclusion denying Amy the services of a sign language interpreter was a violation of the EAHCA's FAPE mandate.<sup>210</sup> The court of appeals relied upon evidence from the district court stating that without an interpreter Amy had access to 59% of interaction in her classroom and with an interpreter she would have 100% access.<sup>211</sup> The court cautioned its decision was not a blanket conclusion that all deaf children should have an interpreter; rather, the ruling was based on Amy's unique learning needs.<sup>212</sup> The court noted her unique family situation, exposure to language, and the current elementary classroom setting.<sup>213</sup> School officials sought United States Supreme Court review.

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<sup>205</sup> *Id.* at 315.

<sup>206</sup> *Id.*

<sup>207</sup> *Rowley*, 483 F. Supp. at 531.

<sup>208</sup> *Hendrick Hudson Dist. Bd. of Educ.*, 458 U.S. at 185.

<sup>209</sup> *Rowley*, 483 F. Supp. at 537.

<sup>210</sup> *Rowley v. Hendrick Hudson Dist. Bd. of Educ.*, 632 F.2d 945 (2d Cir. 1980).

<sup>211</sup> *Rowley*, 632 F.2d at 948.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

For the first time, the Supreme Court was presented with the task of interpreting the EAHCA's statutory language.<sup>214</sup> The Court developed a two-part inquiry to determine if school officials had fulfilled the Act's goal of providing a disabled student with sufficient educational services and supports. First, had school officials complied with the Act's procedural directives?<sup>215</sup> Second, was the child's individualized education program (IEP) reasonably calculated to enable the student to receive educational benefit?<sup>216</sup> Application of this test found an interpreter was not required to provide FAPE and the Court found in favor of the school district.<sup>217</sup> The Court found school officials had complied with the Act's procedural requirements and concluded the record indicated Amy's IEP was designed to provide her with an "adequate" education.<sup>218</sup>

After *Rowley*, Congress did not amend the Act to require the IEP to be calculated to maximize the child's learning potential. This congressional silence suggested the Court correctly interpreted Congress's intent. Since the EAHCA's passage over four decades ago, the Supreme Court has not reviewed a case involving interpretation of the Act's least restrictive environment (LRE) provisions. Four federal circuit courts of appeal have adopted tests to apply when interpreting the LRE mandate. However, to date, the Seventh Circuit, the circuit influencing Illinois, has eschewed the opportunity to formulate its own test.

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<sup>214</sup> *Hendrick Hudson Dist. Bd. of Educ.*, 458 U.S. at 179.

<sup>215</sup> *Id.* at 206.

<sup>216</sup> *Id.* at 206-207.

<sup>217</sup> *Id.* at 209.

<sup>218</sup> *Id.* at 210.

### Federal Circuit Court LRE Tests

The Supreme Court has not reviewed a lower court decision in a case requiring a judicial interpretation of the Individuals with Disabilities Act's (IDEA) least restrictive environment (LRE) provision.<sup>219</sup> Therefore, no universal test exists for lower courts and school officials to apply when determining whether the Act's LRE mandate has been satisfied. The 12 federal circuit courts that divide the country into regions have also yet agree on one test to determine LRE.<sup>220</sup> Four of the 12 federal circuit courts of appeal have formulated individual tests to apply within their jurisdiction when determining if a child's educational placement complies with the IDEA's LRE requirement. The four federal circuit courts to create their own LRE tests are the Fourth, Fifth, Sixth, and Ninth Circuit Courts of Appeals. These individual tests created within each of these circuits are only binding to school districts within the jurisdiction of that circuit court. Illinois is within the United States Seventh Circuit Court of Appeals. LRE tests created in the Fourth, Fifth, Sixth, and Ninth circuits have no direct impact on decisions made within the Seventh Circuit Court. To date the Seventh Circuit Court of Appeals has not adopted its own LRE test; therefore, Illinois school officials have no additional guidance for implementing LRE. Aside from the Seventh Circuit adopting its own test, only the United States Supreme Court creating a universal test could assist Illinois school districts in implementing LRE. Understanding trends across the country within other circuits and application of LRE tests can provide insight into patterns and possible cases that could make their way to the United States Supreme Court.

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<sup>219</sup> 20 U.S.C. § 1412(a)(5)(A) (2004).

<sup>220</sup> Monroe, *supra* note 15, at 582.

### Sixth Circuit

The first circuit to create an LRE tests was the Sixth Circuit in 1983.<sup>221</sup> The Sixth Circuit created the first LRE test when the parents of 9-year-old Neill Roncker, a disabled child challenged by an intellectual disability,<sup>222</sup> brought a lawsuit against school officials alleging Neill's educational placement did not comply with the Act's LRE mandate.<sup>223</sup> During an IEP meeting attended by the parents and school officials, the IEP team reviewed Neill's progress and recommended that Neill be placed in a separate county school outside of his home school.<sup>224</sup> The county school serviced only students challenged by intellectual disabilities. Therefore, this recommended placement would not provide Neill with access to nondisabled peers.<sup>225</sup> His parents alleged Neill's rights to receive his education in the least restrictive environment as outlined by the EAHCA had been denied.<sup>226</sup> *Roncker* was the first case asking any federal court to interpret least restrictive environment (LRE) as outlined in the EAHCA.

School officials' recommendation for Neill to be educated in a separate specialized school triggered his parents' request for a due process hearing.<sup>227</sup> The due process hearing officer rejected the specialized school placement and concluded Neill should be placed in a special education classroom located within a local home school general education building.<sup>228</sup> School officials appealed to the Ohio State Board of Education. The Ohio State Board of Education found Neill should be placed in a separate specialized school but accompanying arrangements

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<sup>221</sup> *Roncker v. Walter*, 700 F.2d 1058 (6th Cir. 1983).

<sup>222</sup> Mental retardation was a term used at that time; today the descriptor is intellectual disability. Roncker's IQ was determined to be below 50, classifying him as Trainable Mentally Retarded (TMR).

<sup>223</sup> *Roncker*, 700 F.2d at 1061.

<sup>224</sup> *Id.* at 1060.

<sup>225</sup> *Id.* at 1062.

<sup>226</sup> *Id.* at 1061.

<sup>227</sup> *Id.*

<sup>228</sup> *Roncker*, 700 F.2d at 1062.

should also be made for him to interact with nondisabled peers.<sup>229</sup> The parents appealed this decision. Both parties agreed Neill required special education supports and services due to his significant learning needs. However, the parents and school officials could not agree on the location where these specialized services should be delivered. The district court found in favor of the school district, recommending that Neill be placed in a separate specialized school.<sup>230</sup> The court extended school officials' broad discretion in determining Neill's placement and reasoned the separate specialized school was an appropriate placement.<sup>231</sup> The district court found that during Neill's 18 months enrolled in the program located within the general education building he made "no significant progress."<sup>232</sup> The court cited school officials did not abuse their power when recommending a placement in a separate school; educational placement was unique to each individual disabled student.<sup>233</sup>

The parents appealed to the United States Court of Appeals for the Sixth Circuit. The panel pointed out Neill's case could be distinguished from *Rowley* for two reasons. First, *Rowley* called upon the courts to assess the special education methodology school officials used to provide Amy Rowley FAPE.<sup>234</sup> In contrast, Neill's case focused primarily upon the question of whether school officials had complied with the EAHCA's LRE mandate.<sup>235</sup> Second, *Rowley*'s district court decision gave due weight to the state administrative proceedings. The Neill court of appeals found error in the district court's weight given to the state administrative hearings.<sup>236</sup> School officials were cited to be out of compliance with the LRE mandate outlined in the Act by

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<sup>229</sup> *Id.* at 1061.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Roncker*, 700 F.2d at 1061.

<sup>234</sup> *Id.* at 1062.

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

both the due process hearing officer as well as the Ohio State Board of Education.<sup>237</sup> The *Roncker* court found the district court erred in the amount of weight given to the two lower decisions regarding the educational placement.<sup>238</sup> As a result, the panel vacated and remanded the district court decision.

In reaching this decision, the Sixth Circuit became the first federal appellate court to create a test for determining whether the EAHCA's LRE mandate had been met. This test is commonly referred to as the *Roncker* Portability Test.<sup>239</sup> The test examines educational benefits in the general education setting compared to those benefits of the special education setting using the following questions:

1. How do the benefits received by the child with a disability in the segregated special education placement compare with the benefits the child would receive in the nonsegregated setting?
2. Would the child be a disruptive force in the nonsegregated setting?
3. What are the costs associated with placing the child in a general education setting with access to nondisabled peers?<sup>240</sup>

Under this test, if the special education services and supports can be provided to the child in a less restrictive environment (e.g., a nonsegregated setting) rather than a more restrictive placement such as a separate segregated school, the more restrictive placement would not comply with the LRE mandate. The *Roncker* panel cited "Congress' strong preference for mainstreaming" but observed some students may require a separate segregated placement.<sup>241</sup> In

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<sup>237</sup> *Id.*

<sup>238</sup> *Roncker*, 700 F.2d at 1062.

<sup>239</sup> Patrick Howard, *The Least Restrictive Environment: How to Tell?*, 33 J.L. & EDUC. 167, 171 (2004).

<sup>240</sup> *Roncker*, 700 F.2d at 1063.

<sup>241</sup> *Id.*

essence, when school officials assert a segregated educational placement is superior, the Roncker Portability Test asks whether the services making the segregated placement superior could feasibly be provided in an integrated setting.<sup>242</sup> Thus under this test a disabled student should only be placed in a segregated facility when “any marginal benefits received from mainstreaming are far outweighed by the benefits gained from services which could not feasibly be provided in the nonsegregated setting.”<sup>243</sup>

### Fifth Circuit

The LRE provision of the EAHCA was tested again six years later in 1989 with *Daniel R.R. v. State Board of Education*.<sup>244</sup> The United States Court of Appeals for the Fifth Circuit declined to adopt the Roncker Portability Test, instead creating a new two-part test to determine compliance with the LRE requirement in the EAHCA. In this case, Daniel R. was a 6-year-old student with Down Syndrome, causing an intellectual disability and a speech impairment.<sup>245</sup> He attended El Paso Independent School District (EPISD) in Texas, where he began his school experience in a half-day special education early childhood program.<sup>246</sup> Following the completion of the first year in special education early childhood, Mrs. R. requested a new program for the upcoming school year. Mrs. R. requested EPISD provide a half-day general education preschool class in addition to the half-day special education preschool class.<sup>247</sup> School officials accommodated her request, creating a combined general education and special education

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<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036 (5th Cir. 1989).

<sup>245</sup> *Id.* at 1039.

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*



program.<sup>248</sup> The combined programming was implemented that fall, and within a short time, the general education preschool teacher began to have concerns.<sup>249</sup> Daniel required constant adult attention and significant modifications to the general education curriculum.<sup>250</sup> In November, the IEP team met and changed Daniel's placement. His placement was changed to a full-time special education early childhood classroom.<sup>251</sup> Daniel would have daily access to his nondisabled peers at recess and three times per week at lunch if his mother was there to supervise.<sup>252</sup>

Mr. and Mrs. R. argued the educational placement had "improperly shut the door to regular education."<sup>253</sup> They appealed the placement decision to a hearing officer. The impartial hearing officer affirmed school officials' decision to change placement to a separate special education classroom.<sup>254</sup> The hearing officer cited the general education pre-kindergarten classroom was not appropriate due to the significant amount of attention and modifications to the curriculum required.<sup>255</sup> Mr. and Mrs. R. appealed the hearing officer's decision to the United States District Court for the Western District of Texas alleging the educational placement violated the LRE mandate outlined in the EAHCA.<sup>256</sup> The district court affirmed the hearing officer's decision to place Daniel in a separate special education classroom.<sup>257</sup> The court cited Daniel's inability to "receive education benefit in regular education."<sup>258</sup> During the appeal process, Mr. and Mrs. R. removed Daniel from EPISD and enrolled him in a private school.<sup>259</sup>

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<sup>248</sup> *Id.*

<sup>249</sup> *Daniel*, 874 F.2d at 1039.

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Daniel*, 874 F.2d at 1039.

<sup>255</sup> *Id.* at 1039-1040.

<sup>256</sup> *Id.* at 1040.

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> *Daniel*, 874 F.2d at 1040.

The court cited the case was still valid as Daniel was still a resident of Texas and therefore had a right to a free appropriate public education under the EAHCA, which also addressed placement in the least restrictive environment.<sup>260</sup>

Mr. and Mrs. R. then appealed to the United States Court of Appeals for the Fifth Circuit.<sup>261</sup> The Fifth Circuit Court chose not to use the Roncker Portability Test but created a new two-prong test. The court felt the new test was more in line with congressional intent and the actual language of the EAHCA.<sup>262</sup> The court stated, “We believe that the language of the Act itself provides a workable test for determining whether a state has complied with the Act’s mainstreaming requirement.”<sup>263</sup>

The Fifth Circuit’s two-prong test examined the following questions to determine if school officials complied with requirements outlined in the EAHCA:

1. Can a satisfactory education be achieved in the general education setting with the use of supplemental aids and services?
2. If removal from general education is required, have school officials “mainstreamed the child to the maximum extent appropriate”?<sup>264</sup>

The court considered four factors to assist in answering the first prong of the test. First, had school officials provided supplementary aids and services to assist in supporting Daniel in the general education setting?<sup>265</sup> It was noted the pre-kindergarten teacher made efforts to modify the curriculum to meet Daniel’s need, in the end resulting in 90 to 100% of the

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<sup>260</sup> *Id.* at 1041.

<sup>261</sup> *Daniel*, 874 F.2d 1036.

<sup>262</sup> Howard, *supra* note 239, at 172.

<sup>263</sup> *Daniel*, 874 F.2d at 1046.

<sup>264</sup> *Id.* at 1048.

<sup>265</sup> *Id.* at 1048-1049.

curriculum needing modification.<sup>266</sup> Next, the court examined the educational benefit of educational placement in the general education classroom.<sup>267</sup> Using testimony from Dr. Bonnie Fairall, EPISD's Director of Special Education, it was noted that due to Daniel's overall developmental delays he was not able to participate in any classroom activities.<sup>268</sup> Then overall benefits outside of academics were reviewed, such as positive language role models and exposure to social experiences.<sup>269</sup> The court cited the only benefit provided by Daniel's educational placement in general education was in fact typical peer interaction. The court noted this was not enough to ignore the lack of academic benefit and the stress placed on Daniel in the general education setting.<sup>270</sup> Finally, the impact Daniel had on the general education classroom was reviewed. The court considered the amount of instructional time Daniel required from the classroom teacher, as well how Daniel's behavior impacted the classroom environment.<sup>271</sup> The court cited the amount of time the teacher devoted to Daniel as unfair to the rest of the class.<sup>272</sup> When applying the first prong of the test, the court found that Daniel could not receive a satisfactory education in the general education setting.<sup>273</sup>

As to the second prong, EPISD was noted for the "creative steps" taken to provide Daniel access to his nondisabled peers while still providing him an appropriate education based on his own needs.<sup>274</sup> The court noted that educational placement should not be viewed as "an all-or-nothing educational system"; rather, the EAHCA requires school officials to provide a

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<sup>266</sup> *Id.* at 1050.

<sup>267</sup> *Id.* at 1049.

<sup>268</sup> *Daniel*, 874 F.2d at 1050.

<sup>269</sup> *Id.* at 1049.

<sup>270</sup> *Id.* at 1051.

<sup>271</sup> *Id.* at 1049.

<sup>272</sup> *Id.* at 1051.

<sup>273</sup> *Daniel*, 874 F.2d 1049.

<sup>274</sup> *Id.* at 1050.

“continuum of services.”<sup>275</sup> The Fifth Circuit Court of Appeals affirmed the district court’s decision. EPISD’s placement in a separate special education classroom complied with the EAHCA LRE provision. EPISD had indeed provided a free appropriate public education that mainstreamed Daniel to the maximum extent appropriate.<sup>276</sup>

### Ninth Circuit

Then in 1994 the Ninth Circuit adopted a new LRE balancing test using components of previous circuit decisions from the Fifth and Sixth circuit.<sup>277</sup> Parents of Rachel Holland filed suit against school officials claiming a violation of the LRE provision within Individuals with Disabilities Education Act (IDEA). Rachel Holland was a young girl with a moderate intellectual disability<sup>278</sup> who had participated throughout early childhood in various models of special education programming at her school. Her parents made a request to place Holland in a general education classroom full time to begin her kindergarten year.<sup>279</sup> Sacramento Unified School District was not in agreement with the parental request but offered a compromise of splitting Holland’s time between special education and general education classrooms.<sup>280</sup> School officials’ proposed plan would provide all instruction in a special education setting and then placement in the general education setting for nonacademic courses including art, music, lunch, and recess. The Hollands disagreed with the proposed placement, arguing Holland should be mainstreamed as outlined in the IDEA.

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<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> *Sacramento City Unified Sch. Dist. Bd. of Educ. v. Rachel H.*, 14 F.3d 1398 (9th Cir. 1994).

<sup>278</sup> Rachel Holland’s IQ was 44

<sup>279</sup> *Rachel H.*, 14 F.3d at 1400.

<sup>280</sup> *Id.* at 1399.

The school district continued to recommend the split placement and the Hollands appealed the decision to the state hearing officer.<sup>281</sup> School officials contended that Holland would not receive benefit from a full-time placement in general education due to the severity of her disability. The hearing office noted that school officials “failed to make an adequate effort to educate Rachel in a regular class pursuant to the IDEA.”<sup>282</sup> The hearing officer cited that Holland was a motivated learner who would benefit from exposure to general education, she was not disruptive to the general education setting, and finally school officials overestimated the cost of providing support for Holland in the general education setting.<sup>283</sup> The hearing officer found in favor of Holland’s full-time placement in general education with supplemental services including a part-time teacher assistant and consultative special education services.<sup>284</sup> The school district then appealed the case to the United States District Court for the Eastern District of California. The district court affirmed the hearing officer’s finding for Holland’s placement in full-time general education programming with supplemental services.<sup>285</sup> School officials appealed to the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit Court adopted a new test that drew on components of both *Daniel R.R* and *Roncker* (Fifth and Sixth Circuits).<sup>286</sup>

Through the district court’s review of the case a new four-factor balancing test was created.<sup>287</sup> School officials must consider the following to determine if the general education placement conforms to the Act’s LRE expectations.<sup>288</sup>

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<sup>281</sup> *Id.* at 1400.

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> *Rachel H.*, 14 F.3d 1400.

<sup>285</sup> *Id.* at 1399.

<sup>286</sup> Melvin, *supra* note 67, at 637.

<sup>287</sup> *Rachel H.*, 14 F.3d at 1401.

<sup>288</sup> *Id.*

- 1) What are the educational benefits of participation in the general education classroom compared to the benefit in the special education classroom?<sup>289</sup>
- 2) What are the nonacademic benefits in the general education classroom compared to the special education classroom?<sup>290</sup>
- 3) What impact would the placement have on the general education classroom, specifically the teacher and students?<sup>291</sup>
- 4) What is the cost of providing the services in the general education setting?<sup>292</sup>

First, the court reviewed the educational benefit of Rachel's participation in the general education classroom compared to the benefit in the special education classroom.<sup>293</sup> School officials failed to show the instruction provided in a separate special education setting was superior to instruction provided in the general education setting. The court also found that Holland's IEP goals could be implemented in the general education setting with modifications. Second, the court reviewed the nonacademic benefits Rachel would receive in the general education classroom compared to the special education classroom.<sup>294</sup> The court found the testimony of Holland's classroom teacher credible. The classroom teacher noted her improved self-confidence and establishing friendships.<sup>295</sup> Third, the court considered the impact Holland would have on the general education classroom,<sup>296</sup> specifically reviewing how disruptive Holland's would be in the learning environment and how much additional teacher time Holland

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<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> *Rachel H.*, 14 F.3d at 1401.

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

would monopolize.<sup>297</sup> The court found Holland would not distract from the learning environment; in fact, she was well behaved and followed directions. Fourth, the court reviewed the cost of providing Holland support and services in the general education setting.<sup>298</sup> School officials cited it would cost \$109,000.00 to include Holland in full-time general education.<sup>299</sup> The court found this figure to be largely inflated.<sup>300</sup> School officials estimated as part of the total cost that it would cost \$80,000.00 to provide schoolwide sensitivity training. The court found that training could be provided at no cost from the state and sensitivity training would be beneficial for all students with disabilities, not just Holland, therefore the cost was inappropriately assigned.<sup>301</sup> The district court found in favor of Holland's placement in full-time general education. The court reached this decision by using the four questions as a balancing test.<sup>302</sup> The United States Court of Appeals for the Ninth Circuit approved and adopted the four-factor balancing test used by the district court.<sup>303</sup> The Ninth Circuit affirmed the judgment of the district court.<sup>304</sup>

#### Fourth Circuit

The final LRE test was developed by the United States Court of Appeals for the Fourth Circuit in 1997.<sup>305</sup> The Hartmanns brought suit against school officials under the Individuals with Disability Education Act (IDEA), alleging a failure to ensure the least restrictive

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<sup>297</sup> *Rachel H.*, 14 F.3d at 1401.

<sup>298</sup> *Id.* at 1402.

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> *Id.*

<sup>302</sup> *Rachel H.*, 14 F.3d at 1404.

<sup>303</sup> *Id.*

<sup>304</sup> *Id.* at 1400.

<sup>305</sup> *Id.* at 1402.

environment (LRE).<sup>306</sup> Mark Hartmann, an 11-year-old student with autism, had received special education services beginning in preschool.<sup>307</sup> Hartmann's overall communication was impacted by autism. He was unable to speak, used a communication device for some limited one-word utterances, and was unable to write due to significant fine motor deficits.<sup>308</sup> In kindergarten he was enrolled in a split program, spending half his day in a self-contained special education classroom for students with autism and the remainder of the day in a general education classroom.<sup>309</sup> In first grade, services were changed and Hartmann was enrolled full time in a general education classroom. Supplemental services provided included speech, occupational therapy, and a full-time teacher assistant.<sup>310</sup> At the conclusion of Hartmann's first-grade year, the family moved from Illinois to Loudoun County, Virginia.

Upon enrolling in the new school in Virginia, school officials implemented the IEP as written from Illinois and placed Hartmann in full-time general education.<sup>311</sup> He again was provided a full-time teacher assistant along with direct speech therapy.<sup>312</sup> Both the teacher and assistant received additional training in specific communication techniques for students with autism.<sup>313</sup> School officials also provided staff-specific training by an inclusion facilitator targeted to assist disabled students in the general education setting.<sup>314</sup> During the school year, modifications were made to the general education curriculum.<sup>315</sup> In addition to curricular needs, he also required significant daily behavior management. Hartmann's behavior outbursts included

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<sup>306</sup> *Hartmann v. Loudoun Cnty. Bd. of Educ.*, 118 F.3d 996 (4th Cir. 1997).

<sup>307</sup> *Id.* at 999.

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

<sup>310</sup> *Id.*

<sup>311</sup> *Hartmann*, 118 F.3d at 999.

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

<sup>315</sup> *Id.*



hitting, kicking, biting, loud screeching, and removing clothing; he required both the teacher and assistant to manage his behavior. As a result of his outbursts, the other students in the classroom had to be redirected back to task.<sup>316</sup>

In May 1994 the IEP convened to review Hartmann's program and make plans for the upcoming school year. The IEP team determined he was not making academic progress in his current programming.<sup>317</sup> The IEP team recommended a placement in a self-contained special education classroom for students with autism.<sup>318</sup> The classroom was located in a different elementary building, but the new location was also a general education elementary building where he would have opportunities for interactions with nondisabled peers for art, music, recess, library, and physical education.<sup>319</sup> He would also have had the opportunity to be included in the general education classroom as he showed improvement in the self-contained special education classroom.<sup>320</sup> The Hartmanns refused to agree with the new IEP stating it was a violation of IDEA's LRE provision. School officials initiated due process, and in December 1994 the hearing officer upheld the IEP written for the new placement in the self-contained special education classroom.<sup>321</sup> The hearing officer noted Hartmann's difficult behavior and that he received no academic benefit from the general education placement.<sup>322</sup>

The hearing officer's decision was appealed to the United States District Court for the Eastern District of Virginia.<sup>323</sup> The district court found that Hartmann could receive educational

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<sup>316</sup> *Hartmann*, 118 F.3d at 1000.

<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

<sup>321</sup> *Hartmann*, 118 F.3d at 1000.

<sup>322</sup> *Id.*

<sup>323</sup> *Hartmann*, 118 F.3d 996.

benefit from a general education placement and reversed the hearing officer's decision.<sup>324</sup> The court stated school officials did not provide enough support to make the general education placement successful.<sup>325</sup> The court addressed the significant behavior, stating that "disruptive behavior should not be a significant factor in determining appropriate educational placement for a disabled child" due to the strong preference for inclusion as outlined in IDEA.<sup>326</sup> School officials then appealed the decision to the United States Court of Appeals for the Fourth Circuit.

The circuit court devised a three-part test to determine when mainstreaming is not required:

1. Mainstreaming is not required when the disabled student would not receive educational benefit.<sup>327</sup>
2. Mainstreaming is not required when any benefit from mainstreaming is significantly outweighed by the benefits from a separate special education setting.<sup>328</sup>
3. Mainstreaming is not required when the special education student behaviors are a disruptive force in the general education classroom.<sup>329</sup>

Through teacher and therapist testimony,<sup>330</sup> the court found that Hartmann did not receive any educational benefit in the general education classroom. It was noted the improvement in social skills was not enough to overlook the fact that he made no academic progress during the year. Hartmann's behaviors (including hitting, biting, kicking, and pinching)

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<sup>324</sup> *Id.* at 1000.

<sup>325</sup> *Id.*

<sup>326</sup> *Id.*

<sup>327</sup> *Id.* at 1001

<sup>328</sup> *Hartmann*, 118 F.3d at 1002.

<sup>329</sup> *Id.* at 1004.

<sup>330</sup> *Id.* at 1002.

were reviewed by the court and found to be disruptive.<sup>331</sup> The court of appeals also supported the recommended placement in the self-contained classroom located in a different elementary school, citing “the proposed Leesburg placement was carefully tailed to ensure that he was mainstreamed to the maximum extent appropriate.”<sup>332</sup> The district court ruling was reversed and remanded.<sup>333</sup>

School administrators in Illinois have no binding court cases to provide guidance on the implementation of the LRE provision. At the present time, the United States Court of Appeals for the Seventh Circuit has yet to adopt a test from another circuit or create their own test. The Seventh Circuit provides binding legal requirements for Illinois, Wisconsin, and Indiana school districts. The United States Supreme Court has yet to hear a case involving LRE since the implementation of the Education for All Handicapped Children Act of 1975 (EAHCA). Therefore, Illinois school administrators are left with various circuit cases and educational best practices research to design and implement programming to meet the LRE mandate. Due to the lack of guidance provided to Illinois school administrators, the implementation of LRE varies vastly from district to district.

Marx et al.<sup>334</sup> reviewed the outcome of court cases and identified four strategies IEP teams can use to assist in determining LRE as outlined in IDEA. First, teams must have an understanding of case law. IEP teams must have an understanding of circuit court cases that are binding to their area but also be aware of neighboring circuit court cases. Second, the team should have a bank of guiding questions to discuss during the IEP meeting. These questions are

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<sup>331</sup> *Id.* at 1005.

<sup>332</sup> *Id.*

<sup>333</sup> *Hartmann*, 118 F.3d at 1005.

<sup>334</sup> Marx et al., *Guiding IEP Team on Meeting the Least Restrictive Environment Mandate*, 50 INTERVENTION IN SCH. AND CLINIC 45-50 (2014).

derived from seminal circuit court cases. Third, the team discussion should begin with initial discussions considering the general education setting. If the general education setting does not work, then the continuum of educational placement should be considered in order of least restrictive to more restrictive. Finally, the team must properly identify all of the special education services the student individually requires that will drive placement. Special education is not a specific place, rather a combination of services needed.

### Seventh Circuit Interpretation of LRE Cases

The United States Seventh Circuit Court of Appeals has not adopted one universal LRE test for application across all cases. School officials in Illinois are left with the original language of the IDEA and interpreting local Seventh Circuit cases to create IEPs that fulfill the requirement of the LRE provision as outlined in the IDEA. School administrators are not lawyers; when left to interpret court cases without a clear test, inconsistent application.

Crockett and Kauffman found educators use a variety of definitions for LRE.<sup>335</sup> The researchers found the language used to define educational placements is important to both lawyers and school officials. Salem and Fell, as cited in Crockett and Kauffman, found various state-level interpretations of LRE. Some of the state definitions also included educational jargon such as “mainstreaming.” Mainstreaming is also a concept with no concrete consistent definition or application. Gross and Vancer, also cited in Crockett and Kauffman, noted the confusion around mainstreaming as teams use various phrases interchangeably. Osborne and DiMattia, as cited in Crockett and Kauffman, make the case that least restrictive environment and mainstreaming should not be used interchangeably, noting LRE is a legal principle and

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<sup>335</sup> Crockett & Kauffman, *supra* note 24, at 133.

mainstreaming is an educational practice. Taylor, as cited in Crockett and Kauffman, takes a different view of LRE as a policy directive not a legal principle.

In Illinois, both parents and school officials look to the Illinois State Board of Education (ISBE) for additional special education resources. The ISBE website has a section under “Special Education Programs and Services” titled “Parent Advocates.” This section lists resources for parents for information and training. A resource for parent training is called the Least Restrictive Environment Clearing House. The clearing house lists a phone number and email address for additional assistance. The phone number listed as been disconnected and the email address is returned to sender as an undeliverable message. In some cases, parents feel the only way to have their voices heard is to seek legal actions.

Additional LRE guidance can be found in the ISBE LRE Policy Statement issued in February 2000.<sup>336</sup> Although this is not case law, it is administrative law in Illinois. School officials are required to have a continuum of alternative placement options available to meet all student needs. All IEP teams must first consider the general education classroom and determine if additional supports and aids can be added to meet the individual needs before making a recommendation to more restrictive placement. When an IEP team makes placement recommendations, they must consider individual goals, proximity to the student’s home, disruption to general education setting, access to general education curriculum, and participation in district/state assessments.<sup>337</sup> Placement decisions must be made by a team and be reviewed annually at a minimum.<sup>338</sup> LRE also applies to all nonacademic and extracurricular activities such as athletics, field trips, lunch, recess, clubs, and transportation. Students are required to

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<sup>336</sup> Policy Statement, Least Restrictive Environment Illinois State Board of Education (February 2000), [https://www.isbe.net/Documents/lre\\_policy.pdf](https://www.isbe.net/Documents/lre_policy.pdf).

<sup>337</sup> *Id.*

<sup>338</sup> *Id.*

have access to the needed supplementary aids and services at any nonacademic and extracurricular activity arranged by the school.<sup>339</sup>

Before cases make their way to the United States Seventh Circuit Court of Appeals, all cases begin with a due process hearing resulting in a decision issued by a hearing officer. An examination of Illinois State Board of Education due process decisions from 2015-September 2020 identified hearing officer themes in determining LRE. First, hearing officers explicitly state the Seventh Circuit has yet to adopt a universal LRE test. Some even go as far as to note other circuit courts that have created tests, but note those do not apply in the Seventh Circuit. Most decisions also cite the Seventh Circuit case *Beth B. v. Van Clay*.<sup>340</sup> *Beth B.* will be discussed in great detail below. Overall, final LRE placement findings were a mix of both general education settings and separate settings. Decisions were found in favor for both parties, school officials and parents, but there was a reoccurring theme of greater deference to school district recommendations due to educational background and vast experience. All decisions note the level of supports and services a student requires and determine first if those can be delivered in the general education setting or if they require some other setting. A few decisions also note the final placement decision is not a placement for the student for the remainder of their educational career, but rather the placement appropriate at that time, and it could change in the future. Many cases don't end with a hearing officer decision. Listed below are cases where those initial hearing officer decisions were appealed and eventually made their way to the United States Seventh Circuit Court of Appeals.

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<sup>339</sup> *Id.*

<sup>340</sup> *Beth B. v. Van Clay*, 282 F.3d 493 (7th Cir. 2002).

*Lachman v. Illinois State Bd. of Ed.*, 852 F.2d 290 (7<sup>th</sup> Cir. 1988)<sup>341</sup>

One LRE case reached the Seventh Circuit in 1986 when Benjamin Lachman, a deaf student, prepared to enter kindergarten. School officials and his parents no longer agreed on his placement, resulting in due process.<sup>342</sup> When Benjamin entered preschool in 1984, his school career began in a specialized preschool program called the Regional Hearing Impaired Program (RHIP), a special education cooperative program. RHIP classrooms were comprised of other students with hearing impairments and utilized total communication<sup>343</sup> as the teaching philosophy.<sup>344</sup> Benjamin completed two years of preschool in the RHIP classroom without incident.

In the spring prior to Benjamin's kindergarten year, the IEP team convened. At this meeting school officials recommended continued placement in a RHIP classroom for kindergarten in conjunction with integration into regular classes with nonhearing-impaired students for social studies, science, gym, and art.<sup>345</sup> Benjamin would spend half of his school day fully mainstreamed and the remainder of his day within a self-contained RHIP classroom in a general education school building.<sup>346</sup> Benjamin's parents disagreed and requested placement in his neighborhood school in a regular education kindergarten classroom supported by a full-time cued speech<sup>347</sup> teacher.<sup>348</sup> In disagreement with the IEP team recommendation, Benjamin's

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<sup>341</sup> *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290 (7th Cir. 1988).

<sup>342</sup> *Id.* at 291.

<sup>343</sup> Total communication is a method that includes using multiple forms of communication. The forms include sign language, lip reading, body language, speech, and use of assistive devices. The Regional Hearing Impaired Program (RHIP) classroom relied primarily upon sign language.

<sup>344</sup> *Lachman*, 852 F.2d at 291.

<sup>345</sup> *Id.* at 292.

<sup>346</sup> *Id.* at 296.

<sup>347</sup> Cued speech is a method that relies on lip reading and eight hand shapes held up to the mouth to clarify phonetics.

<sup>348</sup> *Lachman*, 852 F. 2d at 291.

parents initiated due progress review.<sup>349</sup> First a Level I (local level) hearing was held. The Level I impartial hearing officer affirmed the school officials' placement.<sup>350</sup> Then a Level II (state educational agency) hearing was held, and the decision was again upheld.<sup>351</sup>

In November 1986, Benjamin's parents appealed the decision to the United States District Court for the Northern District of Illinois, Eastern Division. Their chief complaint focused on school officials' recommended placement in the RHIP classroom as a denial of a free and appropriate public education (FAPE) as outlined in the Education for All Handicapped Children Act (EAHCA).<sup>352</sup> The court reviewed the claim using the procedural and substantive requirements of the EAHCA and *Rowley* as guidance.<sup>353</sup> The district court determined the school program at RHIP complied with the statutory procedures of the EAHCA.<sup>354</sup> It was also determined by the court that the IEP was reasonably calculated for Benjamin to receive educational benefit.<sup>355</sup> The court also noted that "imposing their view of preferable educational methods" was not the role of the court.<sup>356</sup> The district court found the recommended IEP provided FAPE and the complaint was dismissed.<sup>357</sup>

Benjamin's parents appealed the dismissal to the United States Court of Appeals for the Seventh Circuit. The parents argued the district court erred in ruling by using the application of *Rowley*.<sup>358</sup> The parents argued Benjamin's right to be mainstreamed as outlined in the Education

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<sup>349</sup> *Id.* at 292.

<sup>350</sup> *Id.*

<sup>351</sup> *Id.*

<sup>352</sup> *Id.*

<sup>353</sup> *Lachman*, 852 F. 2d at 292.

<sup>354</sup> *Id.*

<sup>355</sup> *Id.*

<sup>356</sup> *Id.*

<sup>357</sup> *Id.* at 293.

<sup>358</sup> *Lachman*, 852 F.2d at 294.



for All Handicapped Children Act (EAHCA) was not fully examined by the district court.<sup>359</sup> The Seventh Circuit observed the district court's application of *Rowley* focused on the larger overarching requirement of the EAHCA and application of FAPE without much emphasis on the LRE.<sup>360</sup> The Seventh Circuit determined the main issue between school officials and parents focused more specifically on least restrictive environment (LRE) interlaced with the question of using cued speech or total communication methodologies.<sup>361</sup> The Seventh Circuit applied *Roncker* to determine "whether the services which make the segregated placement superior can be feasibly provided in a nonsegregated setting" to determine if recommended placement was appropriate.<sup>362</sup> Examining the facts of the case, the court noted the crux of the disagreement falls squarely on type of methodology recommended by each party which impacts the location of services provided. The court determined LRE could not be examined in isolation but rather it must be examined in conjunction with the larger principle of the Act to provide handicapped children with a free and appropriate public education.<sup>363</sup> The court also noted the Act does not specifically address methodology; rather, it was left to the local school officials in cooperation with parents.<sup>364</sup>

Upon further examination the court determined the parents' request for full mainstreaming was only possible using the parents' preferred methodology, requiring the use of cued speech methodology and a full-time cued speech teacher in the classroom.<sup>365</sup> The parents also did not provide any evidence that Benjamin should be mainstreamed anymore than the

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<sup>359</sup> *Id.*

<sup>360</sup> *Id.*

<sup>361</sup> *Id.*

<sup>362</sup> *Id.* at 295.

<sup>363</sup> *Lachman*, 852 F.2d at 296.

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

current IEP recommended using school officials' methodology of total communication.<sup>366</sup> The court narrowed the issue to a larger disagreement of methodology; absent of this disagreement, there would be no issue with the extent of mainstreaming outlined in Benjamin's current IEP.<sup>367</sup> The Seventh Circuit decided the lower court did not err through the application of *Rowley* without specifically addressing the issue of least restrictive environment.<sup>368</sup> The court found school officials' recommended IEP complied with the EAHCA, also noting parents are not empowered to determine specific programs or methodology.<sup>369</sup> The Seventh Circuit affirmed the district court decision.<sup>370</sup>

*Monticello Sch. Dist. No. 25 v. George L.*, 102 F.3d 895 (7th Cir. 1996)<sup>371</sup>

In 1994, Brock Leach's parents made the decision to unilaterally place their son in a residential facility during his tenth-grade year when they no longer agreed with school officials' recommended IEP. The Seventh Circuit Court of Appeals was again asked to interpret the LRE provision.<sup>372</sup> Leach began his school career in Monticello School District enrolled in general education kindergarten in 1983 with no special education eligibility.<sup>373</sup> He progressed from grade to grade enrolled in general education with no IEP but did have attention deficit/hyper activity disorder (ADHD) as diagnosed by the family physician.<sup>374</sup> In 1991, during Leach's seventh-grade year, school officials initially evaluated him for potential special education services.<sup>375</sup> The

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<sup>366</sup> *Id.*

<sup>367</sup> *Id.*

<sup>368</sup> *Lachman*, 852 F.2d at 296.

<sup>369</sup> *Id.* at 297.

<sup>370</sup> *Id.*

<sup>371</sup> *Monticello Sch. Dist. No. 25 v. George L.*, 102 F.3d 895 (7th Cir. 1996).

<sup>372</sup> *Id.* at 900.

<sup>373</sup> *Id.*

<sup>374</sup> *Id.*

<sup>375</sup> *Id.*

multidisciplinary team reviewed the evaluation results and made the determination Leach qualified for special education services in the area of a mild specific learning disability.<sup>376</sup> The IEP team convened annually and implemented updated IEPs. In 1994, during Leach's tenth-grade year, his grades began to falter. He received barely passing grades and, in some instances, even failing grades.<sup>377</sup> School officials proposed an updated IEP recommending continued placement at the home high school with special education supports.<sup>378</sup> Shortly after the creation of the updated IEP, Leach's parents unilaterally placed him at Brehm Preparatory School, an approved residential facility.<sup>379</sup> The parents then requested a due process hearing.

The Level I due process hearing decision was reached after a five-day hearing.<sup>380</sup> On August 4, 1994, the independent hearing officer determined Monticello High School did not provide FAPE and the school district would be required to reimburse the parents for the private school placement.<sup>381</sup> The hearing officer determined LRE could be met back in the home school with some modifications to the current IEP.<sup>382</sup> Given the time constraints of school starting, the hearing officer recommended Leach remain at the private facility at the district expense for the remainder of the semester.<sup>383</sup> During this time the home high school would make recommended modifications to the IEP.<sup>384</sup> Leach was to return to Monticello High School in Spring 1995.

The school district appealed the decision to the Level II due process hearing officer. Leach's parents wanted to keep the student enrolled in the private placement at the cost of the

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<sup>376</sup> *George L.*, 102 F.3d at 900.

<sup>377</sup> *Id.*

<sup>378</sup> *Id.*

<sup>379</sup> *Id.*

<sup>380</sup> *Brief for Petitioner at 6, Monticello Sch. Dist. No. 25 v. George L.*, 102 F.3d 895 (7th Cir. 1996) (No. 96-1765).

<sup>381</sup> *Id.*

<sup>382</sup> *Id.*

<sup>383</sup> *Id.*

<sup>384</sup> *Id.*

district for the entire school year. On November 21, 1994, the Level II hearing officer affirmed the previous hearing officer's decision.<sup>385</sup> It was determined with some additional modifications to the IEP that Monticello High School met the requirements of LRE.<sup>386</sup> School officials followed the Level II decision, and in December 1994, changes were made to Leach's IEP (hereafter IEP-2) to prepare for his return to the local high school in January 1995.<sup>387</sup> Leach's parents did not agree with the recommended changes to the IEP and counterclaimed that the hearing officers had erred in determining LRE.<sup>388</sup> The counterclaim was dismissed.<sup>389</sup>

In March 1995, school officials challenged the Level II hearing officer's decision regarding IEP-1 in the United States District Court for the Central Division of Illinois.<sup>390</sup> The court reviewed the Level II hearing officer's decision from November 1994.<sup>391</sup> The court first reviewed the case to determine if school officials had complied with statutory procedures and then if IEP-1 was reasonably calculated to provide Leach educational benefit.<sup>392</sup> The court employed *Rowley* to answer both questions. First the court determined all the IDEA statutory procedures were followed in creation of Leach's IEP as well as through both due process hearings.<sup>393</sup> Second, the court found the IEP created for Leach at his home high school was "reasonably calculated" to provide educational benefit.<sup>394</sup> The court cited it must defer to the educational professionals who were trained and evaluated Leach to make educational

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<sup>385</sup> *Brief for Petitioner at 6, Monticello Sch. Dist. No. 25 v. George L.*, 102 F.3d 895 (7th Cir. 1996) (No. 96-1765).

<sup>386</sup> *Id.*

<sup>387</sup> *Monticello Sch. Dist. No. 25 v. George L.*, 910 F. Supp. 446, 447 (C.D. Ill. 1995).

<sup>388</sup> *Brief for Petitioner at 6, Monticello Sch. Dist. No. 25 v. George L.*, 102 F.3d 895 (7th Cir. 1996) (No. 96-1765).

<sup>389</sup> *George L.*, 102 F.3d at 899.

<sup>390</sup> *Monticello*, 910 F. Supp. 466.

<sup>391</sup> *Id.* at 447.

<sup>392</sup> *Id.*

<sup>393</sup> *Id.*

<sup>394</sup> *Id.*

intervention recommendations.<sup>395</sup> The court cited neither side pointed out any major flaws in the IEP that required the court to step in.<sup>396</sup> The court cited the IDEA's "clear preference for mainstreaming whenever possible."<sup>397</sup> Leach's parents provided the court with various examples of cases that supported private-facility placements as compliant in fulfilling the IDEA's LRE mandate.<sup>398</sup> The court went on to further point out that Leach's disability was mild to moderate and his "situation does not fit into the narrow exception to IDEA's mainstreaming preference."<sup>399</sup> The court found in favor of the school officials' recommended IEP-1.

In October 1995, school officials filed a claim with the United State Court of Appeals for the Seventh Circuit to vacate the Level II hearing officer's decision from November 1994.<sup>400</sup> The Level II hearing officer's decision supported the Level I hearing officer's decision requiring school officials to modify the original IEP before Leach returned to Monticello High School.<sup>401</sup> During the interim, Leach would remain at the private facility at the district expense until the start of Spring Semester of 1995.<sup>402</sup> The court noted the lower courts had no specific test to apply in the determination of LRE cases, unlike the Third, Fifth, and Eleventh Circuit Courts.<sup>403</sup> The Third and Eleventh Circuits have adopted the same test as the Fifth Circuit. The court found no errors in the district courts' review of the LRE mandate outlined in the IDEA through the application of the *Rowley* standard.<sup>404</sup> The court also agreed with the district review of the

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<sup>395</sup> *Monticello*, 910 F. Supp. at 447.

<sup>396</sup> *Id.*

<sup>397</sup> *Id.*

<sup>398</sup> *Id.* at 449.

<sup>399</sup> *Id.*

<sup>400</sup> *George L.*, 102 F.3d at 899.

<sup>401</sup> *Id.*

<sup>402</sup> *Id.*

<sup>403</sup> *Id.* at 906.

<sup>404</sup> *Id.* at 904.

hearing officer's recommendation to modify IEP-1 prior to Leach returning to Monticello High School.<sup>405</sup> The court affirmed the decision of the district court.<sup>406</sup>

*Sch. Dist. Of Wisc. Dells v. Z.S.*, 295 F. 3d 671 (7th Cir. Wis. 2002)<sup>407</sup>

In 2002, Z.S.'s guardian disagreed with the court's interpretation of homebound instruction fulfilling the least restrictive environment (LRE) requirement outlined in the Individuals with Disabilities Education Act (IDEA).<sup>408</sup> Z.S. began receiving special education services from the local school district in 1991 at the age 3, noting behavior and speech concerns.<sup>409</sup> Local school officials continued to provide required annual reviews as well as a three-year re-evaluation of services throughout his early school career. Subsequent re-evaluations noted refusal-type behaviors impacting his overall functioning.<sup>410</sup>

During the 1996-1997 school year, during Z.S.'s second-grade year, his behaviors continued to escalate, eventually resulting in out-of-school suspensions.<sup>411</sup> His IEP outlined special education services including the support of a one-to-one teacher assistant.<sup>412</sup> Throughout this school year his behaviors continued to increase, finally resulting in hospitalization in April 1997 to address behaviors including biting, hitting, and kicking.<sup>413</sup> The IEP team convened again in preparation of the 1997-1998 school year, where Z.S. would return to the home school with a combination of special education classes and mainstream general education classes.<sup>414</sup> This level

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<sup>405</sup> *George L.*, 102 F.3d at 906.

<sup>406</sup> *Id.* at 908.

<sup>407</sup> *Sch. Dist. of Wisc. Dells v. Z.S.*, 295 F.3d 671 (7th Cir. 2002).

<sup>408</sup> *Sch. Dist. of Wisc. Dells v. Littlegeorge*, 184 F.Supp.2d 860, 879 (W.D. Wis. 2001).

<sup>409</sup> *Id.* at 862.

<sup>410</sup> *Id.* at 863.

<sup>411</sup> *Id.* at 864.

<sup>412</sup> *Id.*

<sup>413</sup> *Littlegeorge*, 184 F.Supp.2d at 864.

<sup>414</sup> *Id.* at 866.

of support proved to be unsuccessful and the team met in October 1997 to modify Z.S.'s IEP to reflect a more restrictive setting of full-time special instruction within the resource room with the exception of general education music, physical education, and library with the assistance of a one-on-one teacher assistant.<sup>415</sup> This placement continued until January 1999 during Z.S.'s fourth-grade school year, when his guardian placed him at a mental health residential treatment facility where he remained until August 1999, the beginning of fifth grade.<sup>416</sup> Upon his release from the residential facility, school officials met with hospital staff to develop an IEP to reintegrate Z.S. into the public school.<sup>417</sup> Hospital staff reported no physical aggression and his behaviors were well managed.<sup>418</sup> Hospital staff as well as Z.S.'s guardian felt strongly that returning him to the general education environment with an assistant and some small-group special education instruction was the best plan to fulfill the requirement of least restrictive environment.<sup>419</sup> His attendance at the start of the school year was inconsistent, but when he did attend, defiant behaviors began to resurface, culminating in a very dangerous day on September 16 when he refused to comply with staff directives, destroyed school property, and assaulted other children.<sup>420</sup> Local police were called for assistance, and upon arrival, Z.S. continued to defy and kick police and even damaged the police car.<sup>421</sup> Again at the request of Z.S.'s guardian, he was transported back to the mental health residential treatment facility.<sup>422</sup> His behaviors resulted in a three-day suspension from school.<sup>423</sup> School officials and hospital staff worked

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<sup>415</sup> *Id.*

<sup>416</sup> *Id.* at 868.

<sup>417</sup> *Id.* at 869.

<sup>418</sup> *Littlegeorge*, 184 F.Supp.2d at 869.

<sup>419</sup> *Id.*

<sup>420</sup> *Id.* at 896.

<sup>421</sup> *Id.* at 869.

<sup>422</sup> *Id.*

<sup>423</sup> *Littlegeorge*, 184 F.Supp.2d at 869.

together with Z.S.'s guardian to determine an alternative placement outside of the general education school building that would meet Z.S.'s social-emotional needs. The team agreed on a cooperative special education program, the Sauk County Program.<sup>424</sup> During his first month in the program, similar defiant behaviors were noted and at times Z.S. even required physical restraint.<sup>425</sup> At the end of the first month in November 1999, school officials met with Sauk County Program staff, Z.S.'s guardian, and staff from the mental health hospital to review placement. Z.S.'s guardian refused continued placement at Sauk County or placement back at the mental health hospital.<sup>426</sup> During the next month, Z.S.'s guardian kept him home, refusing school officials' recommended program at Sauk County.<sup>427</sup> In December 1999 it was determined by the IEP team that Z.S. would receive homebound instruction comprised of six hours of special education instruction and one hour of occupational therapy per week.<sup>428</sup> The focus of his IEP continued to be addressing his aggressive behaviors with a goal to return to school full time.<sup>429</sup> Homebound instruction was provided as outlined in the IEP for the remainder of the school year.<sup>430</sup> Additional socialization opportunities were provided including community outings and school field trips.<sup>431</sup> During homebound services it was noted Z.S.'s behaviors, grades, and willingness to complete work improved.<sup>432</sup>

Z.S.'s guardian filed due process alleging school officials denied Z.S. a free and appropriate public education (FAPE) in the least restrictive environment (LRE) as outlined by

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<sup>424</sup> *Id.*

<sup>425</sup> *Id.*

<sup>426</sup> *Id.*

<sup>427</sup> *Id.*

<sup>428</sup> *Littlegeorge*, 184 F.Supp.2d at 869.

<sup>429</sup> *Id.* at 871.

<sup>430</sup> *Id.*

<sup>431</sup> *Id.*

<sup>432</sup> *Id.*



the IDEA during the time homebound instruction was provided in the 1999-2000 school year.<sup>433</sup> The guardian also alleged school officials had misidentified Z.S.'s disability.<sup>434</sup> The hearing officer ruled in favor of the guardian.<sup>435</sup> The hearing officer found school officials denied Z.S. FAPE in the LRE "by denying him access to the specialized aid and services that he needs to get an educational benefit."<sup>436</sup> The hearing officer also found Z.S.'s disability was not identified correctly; he had both an emotional disability and autism.<sup>437</sup>

In 2001, school officials sought summary judgment in the United States District Court for the Western District of Wisconsin.<sup>438</sup> To review LRE, the court applied the *Rowley* test, applying both the first and second prongs.<sup>439</sup> The court found school officials complied with the requirements outlined in the IDEA, and the various IEPs created were reasonably calculated to provide Z.S. with educational benefit.<sup>440</sup> The court further noted the IEPs provided education in the least restrictive environment based on Z.S.'s individual needs.<sup>441</sup> The court found the hearing officer overreached his authority in additionally labeling him as having autism.<sup>442</sup> The court outlined the IDEA does not require necessarily proper disability identification, just ensuring students are provided individualized services to meet unique needs.<sup>443</sup> The court found it was clearly documented by the completion of annual reviews and re-evaluation since Z.S. was 3

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<sup>433</sup> *Littlegeorge*, 184 F.Supp.2d at 871.

<sup>434</sup> *Id.*

<sup>435</sup> *Id.*

<sup>436</sup> *Id.*

<sup>437</sup> *Id.*

<sup>438</sup> *Littlegeorge*, 184 F.Supp.2d 860.

<sup>439</sup> *Id.* at 877.

<sup>440</sup> *Id.* at 883.

<sup>441</sup> *Id.*

<sup>442</sup> *Littlegeorge*, 184 F.Supp.2d at 878.

<sup>443</sup> *Id.* at 876.

years old that he qualified for special education services and school officials provided various services.<sup>444</sup> The court granted summary judgment in favor of the school officials.<sup>445</sup>

Z.S.'s guardian appealed the decision to the United States Court of Appeals for the Seventh Circuit.<sup>446</sup> The court cited the district court did not review new evidence, and under normal circumstances, when no new evidence is presented, the district court is required to give due deference to the hearing officer's decision.<sup>447</sup> The court found in this case even without new evidence that the hearing officer's decision "could not survive even the deferential review to which it was entitled."<sup>448</sup> The court stated the main issue for hearing officer review should have been if school officials were out of line when recommending homebound instruction in place of returning him to the general education setting.<sup>449</sup> The court supported school officials' decision for homebound instruction, noting the hearing officer, "playing amateur physician, devoted much of his analysis to insisting that Z.S. was indeed autistic, rather than merely disturbed."<sup>450</sup> The court cited *Rowley*, stating the educational program must be "reasonably calculated to enable the child to receive educational benefit."<sup>451</sup> The court found the hearing officer failed to provide due deference to the school officials' recommendations for programming that were found to be reasonable.<sup>452</sup> The court affirmed the district court decision in favor of the school officials.

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<sup>444</sup> *Id.*

<sup>445</sup> *Id.* at 883.

<sup>446</sup> *Z.S.*, 295 F.3d 671.

<sup>447</sup> *Id.* at 675.

<sup>448</sup> *Id.*

<sup>449</sup> *Id.*

<sup>450</sup> *Id.* at 676.

<sup>451</sup> *Z.S.*, 295 F.3d at 675.

<sup>452</sup> *Id.*

*Beth B. v. Van Clay*, 282 F. 3d. 493 (7th Cir. 2002)<sup>453</sup>

A significant case involving LRE in the Seventh Circuit was *Beth B. v. Van Clay*. In this 2002 case, the Seventh Circuit Court of Appeals reviewed the appropriateness of the district recommendation to place Beth B. in a separate special education classroom. Beth B is described as a 13-year-old female with Rett Syndrome.<sup>454</sup> This diagnosis severely impacted Beth's cognitive skills and physical abilities.<sup>455</sup> Beth's nonverbal communication skills required maximum support to facilitate communication,<sup>456</sup> including the use of an eye gaze, a device that required Beth to single out a picture or symbol with her eye movement to communicate her wants and needs.<sup>457</sup> Due to the significant level of disability, the determination of Beth's cognitive ability was difficult to gauge. According to various experts it ranged in the 12- to 18-month range and others estimate her ability to be in the 4- to 6-year-old range.<sup>458</sup> She lacked the ability to control her extremities and required the use of a wheelchair.<sup>459</sup>

Beth first began receiving special education services from Lake Bluff School District in 1991 via the special education cooperative early childhood program.<sup>460</sup> Beth attended the special education early childhood program from 1991-1994.<sup>461</sup> During that time her IEP-related services included a one-to-one teacher assistant, speech language therapy, occupational therapy, physical therapy, and adaptive physical education.<sup>462</sup> When planning for a transition to kindergarten, Beth's parents urged Lake Bluff School officials to place her in a general education kindergarten.

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<sup>453</sup> *Beth B. v. Van Clay*, 282 F.3d. 493 (7th Cir. 2002).

<sup>454</sup> *Id.* at 495.

<sup>455</sup> *Id.*

<sup>456</sup> *Id.*

<sup>457</sup> *Id.*

<sup>458</sup> *Beth B.*, 282 F.3d. at 495.

<sup>459</sup> *Beth B. v. Van Clay*, 211 F.Supp.2d 1020, 1024 (N.D. Ill., 2001).

<sup>460</sup> *Id.*

<sup>461</sup> *Id.*

<sup>462</sup> *Id.*

School officials agreed and placed Beth in the general education setting with the same related services she had received in early childhood.<sup>463</sup> Beth continued to attend general education for first and second grades.<sup>464</sup> During that time the IEP team convened annually to review progress.<sup>465</sup> Upon the completion of second grade, in June 1997, an IEP meeting was held. At this meeting, school officials recommended a programming change for third grade. School officials recommended a self-contained special education program, the Education Life Skills Program (ELS), housed at a neighboring school.<sup>466</sup> The new program overseen by the special education cooperative had a small student-to-staff ratio and many of the students had forms of autism.<sup>467</sup> Beth's parents disagreed with the new placement and requested a due process review of the district recommendation.<sup>468</sup>

Beth's parents rejected the new placement enacting the IDEA's "stay put" provision.<sup>469</sup> Beth remained in general education, and as the due process review began, Beth started third grade. During the hearing Beth continued to move from grade to grade in general education. The hearing ended October 25, 1999, during Beth's fifth-grade year.<sup>470</sup> In May 2000, the independent hearing office ruled in favor of the school district, supporting the self-contained ELS placement.<sup>471</sup> Beth's parents appealed the hearing officer's decision to the Northern District Court of Illinois for summary judgment. The parents alleged school officials' self-contained special education placement resulted in a denial of a free appropriate public education (FAPE) in the

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<sup>463</sup> *Id.*

<sup>464</sup> *Van Clay*, 211 F.Supp.2d at 1024.

<sup>465</sup> *Id.*

<sup>466</sup> *Id.*

<sup>467</sup> *Id.*

<sup>468</sup> *Id.*

<sup>469</sup> *Van Clay*, 211 F.Supp.2d at 1024.

<sup>470</sup> *Beth B.*, 282 F.3d at 495.

<sup>471</sup> *Id.*

LRE.<sup>472</sup> They also alleged discrimination under the Americans with Disabilities Act (ADA) and requested reimbursement for Beth's private therapy services.<sup>473</sup>

The court reviewed the placement decision to determine if Beth had been provided FAPE in the least restrictive environment (LRE). The parents and school officials each argued only their placement would provide Beth educational benefit.<sup>474</sup> The independent hearing officer found the parents' preferred general education placement would not provide Beth educational benefit.<sup>475</sup> Educational benefit being of primary importance, the IHO never reached the question of LRE.<sup>476</sup> The Northern District Court of Illinois agreed with the IHO that educational benefit is of high importance but determined educational benefit must be weighed with the statute's mainstreaming requirement.<sup>477</sup> The court acknowledged the lack of a universal LRE test: "The circuits are splint into at least three camps, and neither the Supreme Court nor the Seventh Circuit has indicated a preference among the test." <sup>478</sup>

The court examined Beth's case using two tests: *Daniel RR* from the Fifth Circuit and *Roncker* from the Sixth Circuit.<sup>479</sup> In applying the first prong of the *Daniel R.R.* test, the court considered all of the supports implemented in the general education setting. First, the court cited the district's attempts to accommodate Beth, including modified curriculum, various assistive technology devices, specialized training for both staff and students, and modified schedules.<sup>480</sup> Next, the court determined the education benefit Beth had received thus far in general education.

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<sup>472</sup> *Id.*

<sup>473</sup> *Id.*

<sup>474</sup> *Van Clay*, 211 F.Supp.2d at 1026.

<sup>475</sup> *Id.* at 1029.

<sup>476</sup> *Id.*

<sup>477</sup> *Id.*

<sup>478</sup> *Id.*

<sup>479</sup> *Van Clay*, 211 F.Supp.2d at 1031.

<sup>480</sup> *Id.*

It was determined her progress was not a result of the general education environment, rather it was a result of “special education within a regular classroom.”<sup>481</sup> The court cited the complex nature and quick pace of the general education middle school curriculum would provide no educational benefit for Beth.<sup>482</sup> The court pointed out the extensive level of support Beth required.<sup>483</sup> She required a one-on-one assistant, parallel curriculum, and a modified schedule.<sup>484</sup> Finally, the court examined the impact Beth had on the general education setting. Beth’s impact on other students was noted to be mild.<sup>485</sup> More significant was the impact Beth’s needs had on the classroom teacher.<sup>486</sup> Beth’s parallel curriculum required the teacher to work specifically with her while neglecting the remainder of the class.<sup>487</sup> The court found with all of the supports and services Beth required she would not receive a satisfactory education in the regular classroom setting.<sup>488</sup>

In applying the second prong of the *Daniel R.R.* test, the Northern District court found school officials’ new placement would mainstream Beth “to the maximum extent possible.”<sup>489</sup> The new placement included integration for lunch, music, art, field trips, and even times when general education students would come into the special education classroom.<sup>490</sup> Applying these factors under the *Daniel R.R.* test, the Northern District court upheld the IHO decision; Beth had not made satisfactory progress in the general education setting.<sup>491</sup>

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<sup>481</sup> *Id.* at 1032.

<sup>482</sup> *Id.*

<sup>483</sup> *Id.*

<sup>484</sup> *Van Clay*, 211 F.Supp.2d at 1032.

<sup>485</sup> *Id.* at 1033.

<sup>486</sup> *Id.*

<sup>487</sup> *Id.*

<sup>488</sup> *Id.* at 1031.

<sup>489</sup> *Van Clay*, 211 F.Supp.2d at 1033.

<sup>490</sup> *Id.*

<sup>491</sup> *Id.*

The court's inquiry also included the application of the *Roncker* test. In applying the first prong from the *Roncker* test, the Northern District court considered the factors that made the ELS program superior to the general education setting.<sup>492</sup> It was noted in either placement Beth would have access to her one-on-one assistant. The court cited the ELS program provided Beth with direct contact with specially trained staff and access to specialized curriculum.<sup>493</sup> The ELS program also supported Beth's physical needs; her instruction would be in one central location and physical therapy would be incorporated into the day.<sup>494</sup> In applying the first prong of the *Roncker* test, the Northern District court found the ELS program to be superior.<sup>495</sup> The court then applied the second prong of the *Roncker* test by considering the impact Beth had on the general education setting.<sup>496</sup> The court acknowledged the supports provided in the ELS program could not be "feasibly duplicated in the general education setting."<sup>497</sup> The court concluded providing Beth access to a teacher with specialized training would require school officials to assign a second teacher to the general education classroom.<sup>498</sup> Providing a second teacher in the regular classroom and teaching a separate curriculum would create a "segregated special education within a regular classroom."<sup>499</sup> After application of both prongs of the *Roncker* test, the Northern District court found the ELS placement appropriate.<sup>500</sup> The Northern District court affirmed the IHO decision; placement in the ELS program met the requirement of LRE outlined in the IDEA.<sup>501</sup> The court also denied the request for the reimbursement for private therapy, noting

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<sup>492</sup> *Id.* at 1034.

<sup>493</sup> *Id.*

<sup>494</sup> *Van Clay*, 211 F.Supp.2d at 1034.

<sup>495</sup> *Id.*

<sup>496</sup> *Id.*

<sup>497</sup> *Id.*

<sup>498</sup> *Id.*

<sup>499</sup> *Van Clay*, 211 F.Supp.2d at 1034.

<sup>500</sup> *Id.* at 1035.

<sup>501</sup> *Id.*

school officials had provided Beth a program in compliance with the IDEA.<sup>502</sup> The court found no proof of intentional discrimination under the Americans with Disabilities Act (ADA).<sup>503</sup> In September 2001, the Northern District Court granted judgment in favor of the school officials.<sup>504</sup>

Beth's parents then appealed the decision to the Seventh Circuit Court of Appeals, arguing placement in the ELS program violated the IDEA.<sup>505</sup> The court examined the case under two components of the IDEA: FAPE and LRE. First the court reviewed the FAPE requirement and agreed with the district court and the hearing officer's decision; the ELS classroom met the requirements of FAPE.<sup>506</sup> The main component of Beth's parents' argument hinged on the LRE requirement of the IDEA, arguing educating her in the middle school classroom was appropriate.<sup>507</sup> The court noted the Supreme Court had never interpreted the specific LRE provision of the IDEA but throughout *Rowley* had noted the educational environment must be "appropriate."<sup>508</sup>

The Seventh Circuit declined to adopt any formal LRE test rather deciding to use the Act itself to review Beth's placement.<sup>509</sup> The court first reviewed the district recommendation to remove Beth from the general education middle school classroom.<sup>510</sup> The court found school officials did not violate the IDEA requirement to mainstream Beth to the maximum extent appropriate. The court noted the minimal benefits of general education, including the lack of academic progress and the minimal progress developmentally.<sup>511</sup> The court then examined the

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<sup>502</sup> *Id.*

<sup>503</sup> *Id.*

<sup>504</sup> *Beth B.*, 282 F.3d at 495.

<sup>505</sup> *Id.* at 496.

<sup>506</sup> *Id.* at 498.

<sup>507</sup> *Id.*

<sup>508</sup> *Id.*

<sup>509</sup> *Beth B.*, 282 F.3d at 499.

<sup>510</sup> *Id.*

<sup>511</sup> *Id.*



ELS program to determine the extent of interactions with Beth's nondisabled peers. The ELS program provided direct specialized instruction while still including opportunities to participate with nondisabled peers during lunch and other nonacademic tasks.<sup>512</sup> The court concluded the ELS program to be an appropriate mix of services along the "continuum of services" for Beth's integration into the general education setting.<sup>513</sup> The court also noted the lack of educational progress in general education.<sup>514</sup> Supporting the decision, the court noted school officials' extensive knowledge of educational programming, which the court could not match.<sup>515</sup> The court also addressed parental input in IEP decisions, citing school officials "have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents."<sup>516</sup> The Seventh Circuit Court found no violation of the IDEA's LRE mandate, citing the ELS placement provided Beth a free appropriate public education with mainstreaming opportunities.<sup>517</sup> The Seventh Circuit Court of Appeals affirmed the decision of the district court.<sup>518</sup> A few years later, in 2007, another case involving a student with Rett Syndrome reached the Seventh Circuit Court of Appeals.

*Alex R. v. Forrestville Valley Cmty. Unit Sch. Dist.*, 375 F.3d 603 (7th Cir. 2004)<sup>519</sup>

The Seventh Circuit Court of Appeals heard a case indirectly addressing LRE in 2004, when the parent of Alex R. disagreed with the district's recommendation to change placement to

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<sup>512</sup> *Id.*

<sup>513</sup> *Id.*

<sup>514</sup> *Beth B.*, 282 F.3d at 499.

<sup>515</sup> *Id.*

<sup>516</sup> *Lachman v Illinois State Bd. of Educ.*, 852 F.2d 290, 297 (7<sup>th</sup> Cir. 1988)

<sup>517</sup> *Id.*

<sup>518</sup> *Id.*

<sup>519</sup> *Alex R. v. Forrestville Valley Cmty. Unit Sch. Dist.*, 375 F.3d 603 (7th Cir. 2004).

a behavior disorder special education classroom in a neighboring school building.<sup>520</sup> Alex began receiving special education services upon entering kindergarten in his neighborhood school. Alex's IEP provided services due to his diagnosis of Landau-Kleffner Syndrome; the IEP outlined individualized instruction, classroom assistant, and a longer kindergarten day to support additional instruction as well as speech language therapy.<sup>521</sup>

Kindergarten through nearly the end of second grade, Alex made progress in the curriculum and no major behavior concerns were noted.<sup>522</sup> Near the end of second grade concerns around his off-task behaviors and making noises were noticed and began to be addressed by the school psychologist and outside consultants.<sup>523</sup> The IEP team convened in preparation for third grade, providing a mix of general education classes and special education resource classes.<sup>524</sup> By the time Alex began third grade he weighed 150lbs and early on in the year he began attacking staff members, other students, and destroying property.<sup>525</sup> Multiple behavior incidents took place during fall of third grade, including leaving school grounds, hitting and clawing at his teacher, untimely resulting in a five-day out-of-school suspension in October.<sup>526</sup> The IEP team convened and Alex's mother requested he be moved to another elementary school where a past favorite teacher worked. The team granted the request and additionally added to his IEP an individual assistant.<sup>527</sup> Shortly after starting the new school, Alex left the school grounds with staff following behind, ultimately ending with staff unable to keep

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<sup>520</sup> *Id.* at 609.

<sup>521</sup> *Id.* at 606.

<sup>522</sup> *Id.* at 607.

<sup>523</sup> *Id.*

<sup>524</sup> *Alex R.*, 375 F.3d at 607.

<sup>525</sup> *Id.* at 608.

<sup>526</sup> *Id.*

<sup>527</sup> *Id.*

pace with Alex. He disappeared off school grounds into a cornfield.<sup>528</sup> After a three-hour search, Alex was located stuck in the muddy banks of a river. He recovered from hypothermia and upon returning to school after his 10-day suspension, he was placed in a separate special education classroom for students with behavior disorders.<sup>529</sup> Even with the new, more supportive placement, his behaviors continued and included hitting staff, swearing, making threats about murdering staff members, and physically attacking staff.<sup>530</sup>

Alex's mother felt the district had failed to comply with IDEA and began administrative proceedings with the Illinois State Board of Education.<sup>531</sup> The hearing officer found the school district did in fact provide FAPE and complied with the procedural requirements of the IDEA.<sup>532</sup> The hearing officer reviewed other details of the case, including the training level of staff as well as the district's failure to educate Alex in the least restrictive environment.<sup>533</sup> The hearing officer ordered the district to return Alex to the general education classroom, hire outside consultants to assist with Alex's education programming, and implement a districtwide disability awareness curriculum.<sup>534</sup> The school district then appealed the decision to district court. The district court reviewed the hearing officer's information as well as new information and found in favor of the school district.<sup>535</sup> The court found the IEP was developed, reviewed, and revised appropriately, finding no denial of FAPE.<sup>536</sup> The district court reversed the hearing officer's decision to place Alex in the general education classroom.<sup>537</sup>

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<sup>528</sup> *Id.* at 609.

<sup>529</sup> *Alex R.*, 375 F.3d at 609.

<sup>530</sup> *Id.*

<sup>531</sup> *Id.*

<sup>532</sup> *Id.*

<sup>533</sup> *Id.* at 610.

<sup>534</sup> *Alex R.*, 375 F.3d at 610.

<sup>535</sup> *Id.* at 611.

<sup>536</sup> *Id.*

<sup>537</sup> *Id.* at 618.

In 2004, Alex appealed the district court decision and the case was reviewed by United States Courts of Appeals for the Seventh Circuit. The Seventh Circuit Court agreed with the district court that the IEP developed and implemented by the district was “reasonably calculated to enable the child to receive educational benefit.”<sup>538</sup> The court did note that although the various revisions of the IEPs “ultimately did not lead to a favorable outcome,” there was no error on the district’s part.<sup>539</sup> The Seventh Circuit also noted that the LRE was not a specific issue in the appeal. Alex waived appellate review of the LRE question.<sup>540</sup> The Seventh Circuit affirmed the judgment of the district court.<sup>541</sup> The court noted “the district court correctly focused on whether the district provided Alex with adequate IEPs and, in deciding that question, properly took into account the different aspects of Alex’s disability, including his outbursts in the classroom.”<sup>542</sup>

*Ross v. Bd. of Educ. of Twp. High Sch. Dist. No. 211 (7<sup>th</sup> Circuit 2007)*<sup>543</sup>

In 2007, the Seventh Circuit Court of Appeals heard a case involving Lindsey Ross, a high school student with Rett Syndrome. Lindsey was diagnosed with Rett Syndrome at 35 months old.<sup>544</sup> Rett Syndrome is a neurological disorder found more commonly in girls and is usually diagnosed between ages 6 months to 18 months.<sup>545</sup> Lindsey’s speech, motor, and cognitive skills were impacted by Rett Syndrome. She was nonverbal but did have loud unintelligible vocalizations that could last from a few seconds up to one minute; the reason for

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<sup>538</sup> *Id.* at 617.

<sup>539</sup> *Alex R.*, 375 F.3d at 617.

<sup>540</sup> *Id.* at 618.

<sup>541</sup> *Id.*

<sup>542</sup> *Id.*

<sup>543</sup> *Bd. of Educ. v. Ross*, 486 F. 3d 267 (7th Cir. 2007).

<sup>544</sup> *Bd. of Educ. v. Michael R.*, No. 02 C 6098, 2005 U.S. Dist. LEXIS 17450, 3 (N.D. Ill. Aug. 15, 2005).

<sup>545</sup> *About Rhett Syndrome*, <http://www.rettsyndrome.org/about-rett-syndrome/what-is-syndrome> (last visited Apr. 10, 2016).

the vocalizations could “not be known with any certainty.”<sup>546</sup> Due to lack of communication skills and her inability to control fine or gross motor skills, Lindsey engaged in behaviors that were dangerous to herself and others. She would hit herself and strike out at others, usually by head-butting.<sup>547</sup> Lindsey’s cognitive skills were measured and thought to fall in the age range equivalency between 7 and 12 years.<sup>548</sup>

Lindsey’s elementary and junior high school career consisted of a combination of special education and general education inclusion classes within her neighborhood school.<sup>549</sup> Upon entering her freshman year at her local neighborhood high school, Conant High School, a variety of special education supports were implemented throughout her instructional day. Throughout her entire day, she had one special education teacher as well as a teacher’s assistant dedicated to support Lindsey.<sup>550</sup> Her class schedule included five general education classes; during those classes the special education teacher and assistant were responsible for modifying the general education curriculum and transitioning her from class to class as well supporting her behavior.<sup>551</sup> The special education team also worked with her on functional needs such as toileting and communication skills, including the incorporation of assistive communication devices.<sup>552</sup>

In May 2002 of Lindsey’s freshman year, she head-butted two staff members, one of whom required corrective surgery.<sup>553</sup> In an effort to get to the bottom of her behavior, Lindsey’s parents took her to a special clinic in Alabama to be evaluated by a Rett Syndrome expert.<sup>554</sup> The

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<sup>546</sup> *Michael R.*, 2005 U.S. Dist. LEXIS 17450 at 8.

<sup>547</sup> *Id.*

<sup>548</sup> *Id.* at 7.

<sup>549</sup> *Id.* at 3.

<sup>550</sup> *Id.* at 10.

<sup>551</sup> *Michael R.*, 2005 U.S. Dist. LEXIS 17450 at 10.

<sup>552</sup> *Id.*

<sup>553</sup> *Id.* at 11.

<sup>554</sup> *Id.*

expert could not find a physical cause for her behaviors and recommended further evaluation by her doctors back in Chicago.<sup>555</sup> At the same time, school officials were in the process of completing the IDE- required three-year re-evaluation of services for Lindsey.<sup>556</sup> The school district team was comprised of school district staff as well as University of Chicago doctors.<sup>557</sup> The doctors determined that Lindsey's behaviors were the root cause of her inability to make educational progress.<sup>558</sup>

In August 2002, prior to the start of Lindsey's sophomore year, her IEP team met to update her IEP. At the close of the three-year re-evaluation, the IEP team recommended a change in education placement to a self-contained special education setting.<sup>559</sup> This self-contained program was at a neighboring general education high school.<sup>560</sup> The IEP team stated:

Regrettably but realistically, due to Linsey's behavior and general lack of progress, it is not appropriate for Lindsey to continue in her current, so-called educational setting. Not only does she not benefit, but she has also become a significant and serious safety problem for herself and others...At this time, the least restrictive setting for Lindsey should be a self-contained special education program that has very strong behavioral training capabilities.<sup>561</sup>

At the conclusion of the IEP meeting, Lindsey's parents refused to agree with school officials' recommendation for placement in the separate special education setting. Lindsey's parents requested an administrative hearing to review the new placement decision, stating she is best served in the least restrictive environment of the general education setting in her home high school.<sup>562</sup> Two months later in November 2002, Lindsey's parents and school officials reached a

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<sup>555</sup> *Id.*

<sup>556</sup> *Michael R.*, 2005 U.S. Dist. LEXIS 17450 at 11.

<sup>557</sup> *Id.*

<sup>558</sup> *Id.*

<sup>559</sup> *Id.*

<sup>560</sup> *Id.*

<sup>561</sup> *Michael R.*, 2005 U.S. Dist. LEXIS 17450 at 11.

<sup>562</sup> *Id.* at 12.

settlement agreement.<sup>563</sup> The agreement outlined that Lindsey would return to her home school and a reintegration plan would be created by an expert panel whereby she would again have general education classes.<sup>564</sup> A plan was created and Lindsey returned to her home school in April 2003 of her sophomore year. During the remainder of that school year she attended school 35 days but spent much of her time removed from the classroom setting due to behaviors; she was able to stay in English class for a full period only two times.<sup>565</sup>

In August 2003, the IEP team met again at the start of her junior year to conduct an annual review. At this time the school officials were again ready to recommend a more restrictive placement outside of the general education setting, but did not do so due to the previous settlement agreement.<sup>566</sup> The updated IEP was written for her to attend six classes per day in the general education setting.<sup>567</sup> Upon implementation of the updated IEP, Lindsey's behavior and medical issues increased; she was only able to complete her six-period schedule five times from September 2003 through October 2003.<sup>568</sup> The IEP team then met again in November of 2003 to discuss concerns. At the conclusion of that meeting, the IEP team made the recommendation to change her placement to a "multiple needs program" that would be tailored to her specific needs, including specific behavior intervention strategies.<sup>569</sup> The multiple needs program was run by the North DuPage Special Education Cooperative and was housed in a

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<sup>563</sup> *Id.*

<sup>564</sup> *Id.* at 15.

<sup>565</sup> *Id.*

<sup>566</sup> *Michael R.*, 2005 U.S. Dist. LEXIS 17450 at 16.

<sup>567</sup> *Id.*

<sup>568</sup> *Id.*

<sup>569</sup> *Id.* at 20.

neighboring high school, where Lindsey would have access to nondisabled peers.<sup>570</sup> Lindsey's parents filed due process disagreeing with the new placement.<sup>571</sup>

The independent hearing officer assigned to the case heard 42 days of testimony.<sup>572</sup> At the conclusion of the testimony, the independent hearing officer found in favor of the school district's recommended placement in the multiple needs program run by the special education cooperative.<sup>573</sup>

Lindsey's parents appealed the hearing officer's decision to the United States District Court for the Northern District of Illinois requesting she be placed back in her home school, Conant High School. Lindsey's parents alleged the new placement outside of her home school denied her free appropriate public education (FAPE) and education in the least restrictive environment (LRE). Additionally, Lindsey's parents also asked the school district to hire a behavior specialist to create and assist in implementing a functional behavior analysis and specific behavior intervention plan back in the home school.<sup>574</sup> The parents also asked the court to consider awarding Lindsey two years of compensatory services after she aged out of high school.<sup>575</sup>

The majority of the decision focused on the topic of least restrictive environment (LRE).<sup>576</sup> The district court did first review the case to determine if school officials violated Lindsey's access to FAPE.<sup>577</sup> The court applied the two-part *Rowley* test.<sup>578</sup> Given all the

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<sup>570</sup> *Id.*

<sup>571</sup> *Michael R.*, 2005 U.S. Dist. LEXIS 17450 at 20.

<sup>572</sup> *Id.*

<sup>573</sup> *Id.* at 21.

<sup>574</sup> *Id.*

<sup>575</sup> *Id.*

<sup>576</sup> For the purpose of this paper, focus is on least restrictive environment (LRE).

<sup>577</sup> *Michael R.*, 2005 U.S. Dist. LEXIS 17450 at 22.

<sup>578</sup> *Id.*



information presented, the court found the school district “exercised its professional judgment and good faith in producing and implementing Lindsey’s IEP.”<sup>579</sup> The court found no denial of FAPE.<sup>580</sup> The formulations of the various IEPs for Lindsey were all found to be in compliance with *Rowley*.<sup>581</sup>

The court then examined the main issue of the case to determine if placing Lindsey in a self-contained special education classroom was a violation of the IDEA least restrictive environment (LRE) mandate.<sup>582</sup> The court recognized there is no universal LRE test that could be applied to the case, as the Supreme Court had “not yet construed the LRE requirement.”<sup>583</sup> The court did recognize three distinct tests that had been used to determine LRE compliance in other circuit courts, the *Roncker* test, *Holland* test, and *Daniel R.R.* test, but the court chose not to adopt any formal test in this case.<sup>584</sup> The district court chose to use an inquiry to determine the appropriateness of removing Lindsey from the general education setting.<sup>585</sup> Citing *Beth B*, the court determined the IDEA “provides enough of a framework” and did not need a specific test to determine LRE compliance.<sup>586</sup> The inquiry focused on determining “if the student’s education at the regular high school was satisfactory”; if this were true, then school officials would be in violation of the IDEA by recommending a placement outside of the home high school.<sup>587</sup> If school officials’ new placement passed the first part of the inquiry, then the court would

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<sup>579</sup> *Id.* at 41.

<sup>580</sup> *Id.*

<sup>581</sup> *Id.* at 49.

<sup>582</sup> *Michael R.*, 2005 U.S. Dist. LEXIS 17450 at 49.

<sup>583</sup> *Id.* at 50.

<sup>584</sup> *Id.* at 52.

<sup>585</sup> *Id.*

<sup>586</sup> *Id.*

<sup>587</sup> *Michael R.*, 2005 U.S. Dist. LEXIS 17450 at 52.

determine whether the placement allowed Lindsey to be “mainstreamed to the maximum extent appropriate.” Again, if this was true, no violation of the IDEA could be found.<sup>588</sup>

Examining the first question, the court found Lindsey’s placement in her home high school was unsatisfactory.<sup>589</sup> The court supported the independent hearing officer’s decision, using another Seventh Circuit decision, *Beth B.*, a case also dealing with a high school student with Rett Syndrome.<sup>590</sup> The court cited many facts from *Beth B.* that were parallel to Lindsey’s case.<sup>591</sup> The court also found Beth B’s progress in the general education high school classroom to be unsatisfactory even when provided a variety of additional supplemental services, such as a special education teacher, teacher assistant, and communication devices.<sup>592</sup> Lindsey’s parents disagreed and stated she had in fact made meaningful progress in the general education setting in spring 2003 as evidenced by meeting the majority of her IEP goals.<sup>593</sup> The court disagreed, stating those goals were met as a result of the time she spent with the special education teacher outside of the general education classroom.<sup>594</sup>

The court also cited that in the small amount of time Lindsey was able to stay in the general education classroom her behaviors continued to be disruptive and she had minimal nondisabled-peer interactions.<sup>595</sup> During spring 2003, her parents acknowledged that she actually attended school for 35 days, and during those days her behavior consisted of “ninety-three self-injurious behaviors, one attempted strike, six contacts, six attempted head-butts, one actual head-

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<sup>588</sup> *Id.*

<sup>589</sup> *Id.* at 53.

<sup>590</sup> *Id.*

<sup>591</sup> *Id.* at 55.

<sup>592</sup> *Michael R.*, 2005 U.S. Dist. LEXIS 17450 at 54.

<sup>593</sup> *Id.* at 55.

<sup>594</sup> *Id.*

<sup>595</sup> *Id.* at 56.

butt, and thirteen vocalizations.”<sup>596</sup> The court agreed with the hearing officer’s characterization of Lindsey’s behaviors.<sup>597</sup> The court noted the independent hearing officer’s decision that it was Lindsey’s behavior, not her cognition or motor skills, that warranted a change in placement.<sup>598</sup> The court even went as far as to say all of the supports and services provided to Lindsey in the general education setting were actually “special education within the regular classroom.”<sup>599</sup> The court found Lindsey did not receive any “meaningful educational benefit” from placement in her home high school and would actually benefit from the recommended multi-needs program located in a neighboring high school.<sup>600</sup> Using part one of the inquiry, school officials complied with the LRE mandate as outlined in the IDEA.

The second part of the inquiry focused on the recommendation of the Lake Park High School self-contained placement providing Lindsey mainstreaming opportunities to the maximum extent appropriate.<sup>601</sup> The court found the program at Lake Park provided the type of program appropriate to Lindsey’s needs, specifically including a “sophisticated behavior program.”<sup>602</sup> The program also included access to her nondisabled peers throughout the school day, noted as reverse mainstreaming opportunities.<sup>603</sup> The court found the Lake Park placement met the LRE requirement outlined in the IDEA, and the placement was within the appropriate continuum of services guaranteed to Lindsey.<sup>604</sup> The court found in favor of school officials’ recommended placement at Lake Park High School.<sup>605</sup>

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<sup>596</sup> *Id.* at 59.

<sup>597</sup> *Michael R.*, 2005 U.S. Dist. LEXIS 17450 at 59.

<sup>598</sup> *Id.* at 58.

<sup>599</sup> *Id.* at 56.

<sup>600</sup> *Id.*

<sup>601</sup> *Id.* at 52.

<sup>602</sup> *Michael R.*, 2005 U.S. Dist. LEXIS 17450 at 62.

<sup>603</sup> *Id.*

<sup>604</sup> *Id.* at 63.

<sup>605</sup> *Id.* at 64.

In January 2007, Lindsey's parents appealed the decision to the United States Courts of Appeals for the Seventh Circuit.<sup>606</sup> Lindsey's parents disagreed with the district court's decision, stating school officials violated the IDEA in three specific areas relating to Lindsey's IEP.<sup>607</sup> Her parents alleged violations in the following areas: failure to create a transitions plan, LRE, and rights protected under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act.<sup>608</sup>

First, Lindsey's IEP did not include a transition plan. As outlined in the IDEA, Lindsey's IEP should have included a transition plan in August 2002 in preparation for her sophomore year.<sup>609</sup> The district deferred the creation of an elaborate transition plan at that IEP in 2002 and again deferred the plan in August 2003.<sup>610</sup> The Seventh Circuit found the lack of a transition plan to be a procedural error but the lack of a specific transition plan did not result in a denial of the IDEA guarantee of free appropriate public education (FAPE) for Lindsey.<sup>611</sup>

The Seventh Circuit noted least restrictive environment (LRE) was a topic that both the independent hearing office and the district court spent considerable time reviewing.<sup>612</sup> Lindsey's parents argued her education should be in her home school (Conant) and programming at the neighboring high school denied her access to the least restrictive environment (LRE).<sup>613</sup> Just as the district court, the Seventh Circuit declined to adopt any specific LRE multi-factor test.<sup>614</sup> The court first examined whether the programming at the home school was satisfactory, and if it was

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<sup>606</sup> *Ross*, 486 F.3d 279.

<sup>607</sup> *Id.* at 275.

<sup>608</sup> *Id.*

<sup>609</sup> *Id.* at 276.

<sup>610</sup> *Id.*

<sup>611</sup> *Ross*, 486 F.3d at 276.

<sup>612</sup> *Id.* at 277.

<sup>613</sup> *Id.*

<sup>614</sup> *Id.*

not, whether there were reasonable measures the district could take to make the programming satisfactory.<sup>615</sup> If the home school environment could reach satisfactory status, any removal of Lindsey would be in violation of the LRE mandate.<sup>616</sup> If the home school program could not be made satisfactory, then placement in a different program that provided her access to nondisabled peers to the maximum extent appropriate would be in compliance with the LRE mandate.<sup>617</sup> The Seventh Circuit found school officials' recommendation for programming outside of the home school was in compliance with the statute.<sup>618</sup> The court cited Lindsey's significant behavior needs, lack of educational progress, and amount of time spent in a segregated private workroom as reasons to support her removal from the home school.<sup>619</sup> The court found the reverse mainstream opportunities afforded to Lindsey at Lake Park High School met the statutory requirement for the provision of a free appropriate public education in the least restrictive environment.<sup>620</sup>

Third, the parents also sought damages under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act on the basis of discrimination.<sup>621</sup> The Seventh Circuit reviewed the level of services provided and did not find any intentional discrimination.<sup>622</sup> Lindsey's placement at Lake Park High School was again found to be in compliance with the IDEA's LRE mandate; the Seventh Circuit affirmed the district court decision.<sup>623</sup> The district's

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<sup>615</sup> *Id.*

<sup>616</sup> *Ross*, 486 F.3d at 277.

<sup>617</sup> *Id.*

<sup>618</sup> *Id.*

<sup>619</sup> *Id.* at 278.

<sup>620</sup> *Id.*

<sup>621</sup> *Ross*, 486 F.3d at 278.

<sup>622</sup> *Id.*

<sup>623</sup> *Id.* at 279.

recommended placement in the self-contained special education setting was upheld and found to meet the IDEA's least restrictive environment mandate.<sup>624</sup>

### Inclusion Research

School officials in Illinois lack a universal test or resource to use when creating IEPs that comply the IDEA's LRE provision. At this point, the court system is requiring school officials to take into account court case decisions dating from the 1980s through today as well as to synthesize a vast body of research on inclusive best practices when creating and implementing IEPs. The original intent of the IEP was to be individualized to the student's unique needs, but without any additional guidance from the original 1975 congressional language, it leaves room for Illinois school officials' implementation to vary greatly from school district to school district across Illinois. Taking a closer look at special education administrators' understanding of the LRE provision as well as their attitudes towards inclusion can begin to identify trends in Illinois.

School administrators are left to combine the court case decisions handed down from the Seventh Circuit with best practices for students with disabilities to create appropriate programming options aligned to the congressional intent of the IDEA. Sailor and McCart identified five evidence-based best practices in inclusive education through their work on the Schoolwide Integrated Framework for Transformation (SWIFT), an Office of Special Education and Rehabilitation Services (OSEP)-funded project.<sup>625</sup> They found the large proportion of special education students receiving more inclusive education continue to be those with less significant disabilities. Almost 70% of students with more significant needs were spending less than 39% of

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<sup>624</sup> *Id.*

<sup>625</sup> Wayne S. Sailor & Amy B. McCart, *Stars in Alignment*, 39 RESEARCH AND PRACTICE FOR PERSONS WITH SEVERE DISABILITIES 55-64 (2014).

their school day in the general setting. Sailor and McCart highlight the need for traditionally organized schools to shift their thinking to a schoolwide problem-solving approach that includes universal design for learning (UDL) principles. In this system, general education teachers and special education teachers design instruction to meet the needs of all learners, including those with more significant needs. They identified five domains for effective inclusive school reform. First, school administrators must be committed to the shift to inclusive practices in exchange for the more traditional systems currently in place. Second, there must be a schoolwide system of problem solving with embedded UDL for all students. Third, there must be an established framework whereby all school resources are available to all learners regardless of labels. Fourth, school districts must make a strong connection to the families and community to support both learning and social outcomes for all students. Finally, a policy structure must be in place at the district level to ensure decisions can be made within each school to move towards more effective inclusive practices.

Another group of researchers, Kurth, Lyon, and Shogren, examined best practices used by schools to support students with severe disabilities.<sup>626</sup> Kurth and colleagues identified six schools for the study through working with the SWIFT Center's National Leadership Consortium. The researchers identified six schools, grades K-8, and targeted 18 student participants with significant disabilities. Observation records were used to identify themes of best practices used by schools to support students with significant disabilities. The study highlighted a segregated special education classroom was not needed for specialized individualized instruction. It was found individualized instruction was successfully implemented

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<sup>626</sup> Jennifer A. Kurth, Kristin J. Lyon & Karrie A. Shogren, *Supporting Students with Severe Disabilities in Inclusive Schools: A Descriptive Account From School Implementing Inclusive Practices*, 40 RESEARCH AND PRACTICE FOR PERSONS WITH SEVERE DISABILITIES 261-274 (2015).

within the general education setting. The researchers also found the need to use staff in nontraditional roles such as using the co-teaching model. In these situations, staff collaboration was increased in both formal and informal arrangements. Inclusive classrooms were also found to have a wide variety of differentiated instructional activities and instructional materials available for all students, not just those with disabilities.

Areas of improvement were also highlighted to assist in moving towards more comprehensive inclusive programming. There is a need to focus on shifting the delivery of related services to the inclusive environment. Even when co-teaching and other inclusive practices were being implement, many related services were still being delivered in a pull-out setting. It was also noted during large-group instruction that the students were engaged in many passive activities. Suggestions were made to make large-group instruction more differentiated with supporting activities.

Cramer examined the outcomes of one large urban school district's effort to support more students in the least restrictive environment.<sup>627</sup> School officials created an LRE/Achievement at a Glance Tool to monitor student progress in 56 schools, with an emphasis to focus on increasing the percentage of time disabled students were included in general education as well as the overall impact on reading and math achievement. School officials used classroom walkthroughs to develop an initial provision of services rating: "outstanding – meets requirements," "good – needs assistance," "fair – needs intervention," and "needs improvement – needs substantial interventions." Based on the overall ratings, recommendations for follow-up activities were shared with the school site administrator. During the course of one year, through using the tool

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<sup>627</sup> Elizabeth Cramer, *Shifting Least Restrictive Environments in a Large Urban School District*, 11 JOURNAL OF URBAN LEARNING TEACHING AND RESEARCH, 40-49 (2015).



and walkthrough process, the inclusion rate (focusing on those students included for at least 80% or more of the school day) increased from 50% to 68% in one school year. The researcher found there was no statistically significant increases found in disabled students' reading and math achievement. Cramer also noted the change to a less restrictive environment had no negative academic achievement outcomes for disabled students or nondisabled students. Both Congress and research outline big ideas and concepts around the topic of LRE, but the specific formula and implementation at the school district level is left for school officials to determine based on a variety of individual factors.

## CHAPTER THREE

### METHODOLOGY

#### Purpose of the Study

I investigated special education administrators' understanding of the IDEA's (Individuals with Disabilities Education Act) least restrictive environment (LRE) mandate and other factors including training, experience, and classroom supports that influence administrators' attitudes towards inclusion. The study determined whether knowledge of LRE and other characteristics impact special education administrators' views of providing students with inclusive opportunities.

#### Research Questions

These questions guided the study:

1. What is Illinois special education administrators' understanding of the LRE provision outlined in the IDEA?
2. Is there a relationship between special education administrators' knowledge of the federal court system and their attitudes towards inclusion?

#### Participants

The research participants included public school special education administrators. Participants volunteered and were from throughout the state of Illinois. Participants were

identified through the ISBE 2019-2020 Database of Public Illinois School Districts and corresponding administrators.

### Instrumentation

Following an examination of Seventh Circuit Court of Appeals decisions and a literature review of best practices guiding LRE placement, it was determined there was a need to examine special education administrators' understanding of the IDEA's least restrictive environment provision and its practice in Illinois schools. I created the Environment Dynamics Survey (EDS) to determine how factors of training, legal understanding, and classroom supports influence special education administrators' attitudes around LRE and LRE placement practices (Appendix A). The EDS extended a survey developed by Praisner, The Principals and Inclusion Survey (PIS).<sup>628</sup> Praisner provided permission to extend the PIS to address least restrictive environment. Praisner's original target audience was general education building principals. Praisner designed the PIS in four sections: Demographics, Training and Experience, Attitudes Toward Inclusion of Students with Special Needs, and Most Appropriate Placement for Students with Disabilities.

For purposes of this study, I extended the PIS by adding two additional sections: Legal System with Least Restrictive Environment and Classroom Supports for Students with IEPs. As such, there were 15 additional questions added to the original PIS. After creating the new survey items, I engaged with subject matter experts to test the new questions. The subject matter experts included a small group of practicing special education administrators as well as faculty who teach administrators.

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<sup>628</sup> Cindy L. Praisner, *Attitudes of Elementary School Principals Toward the Inclusion of Students with Disabilities*, 69 COUNCIL FOR EXCEPTIONAL CHILDREN at 135 (2003).

Section I Demographic Information included five questions to gather basic information to identify key characteristics of the district. Questions included district composition, average class size, percentage of IEP students and percentage of students serviced in the least restrictive environment. In this section, one question was added to Praisner's PIS:

1. District composition:

- Elementary
- High School
- Unit District
- Cooperative

It should be noted I modified Dr. Praisner's PIS question addressing the number of students serviced in the LRE from at least 75% to a new target of 80% or more of the school day. This 80% target is the outlined requirement of the Illinois Administrative Code Part 226.731.<sup>629</sup>

Section II addressed the special education administrator's professional experience/background as well as their experience with students with disabilities. Praisner designed this section using a literature review to determine factors that relate to educators' attitudes towards inclusion.<sup>630</sup>

I added Section III, Legal System with Least Restrictive Environment. This section addressed the participant's knowledge of the legal implications around the IDEA LRE mandate.

The six questions in this section were:

1. What federal court has jurisdiction over your school district?

- Fourth
- Sixth

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<sup>629</sup> ILL. ADMIN. CODE 23 § 226.731 (2016).

<sup>630</sup> Praisner, *supra* note 628, at 135.

- Seventh
  - Ninth
  - Unsure
2. How do you follow current trends in special education court cases? Check all those that apply:
- Attend conferences
  - Updates from district superintendent or director of special education
  - Read journals
  - Professional organizations
  - School district attorney
  - I don't follow court cases
  - Other, please specify \_\_\_\_\_
3. I feel I have sufficient knowledge and understanding of the LRE provision outlined in the IDEA to make appropriate placement recommendations for students with IEPs:
- Strongly Agree
  - Agree
  - Neutral
  - Disagree
  - Strongly Disagree
4. The United States Supreme Court has ruled on the LRE provision of the IDEA?
- Yes
  - No
  - Unsure

5. Have you been the special education administrator in an IEP team decision that recommended a more restrictive placement that parents did not agree with; which resulted in involving attorneys and/or hearing officers?
  - Yes
  - No
6. Have you been the special education administrator overseeing an LRE due process case?
  - Yes
  - No
7. If you have been part of a due process hearing for LRE, how has that shaped your knowledge and perception of LRE?

I added Section IV, Classroom Supports for Students with IEPs. This section targeted the perceived supports required to provide students opportunities within the LRE. This section was comprised of six total questions. Four questions targeted the current supports provided for special education students. Two questions addressed perceived challenges and needs to provide students with access to general education 80% or more of the school day. The 80% or more target was again selected as the requirement of the Illinois Administrative Code Part 226.731.

The six questions in this section were:

1. Pick the overall percentage of yearly professional development time allocated annually in your district to supporting students with disabilities:
  - 0-11%
  - 11%-20%
  - 21%-30

- 31%-40%
  - 41%-50%
  - More than 50%
2. What types of supports are provided in your general education settings for students with IEPs in your district (pick all those that apply):
- Co-teaching
  - Small-group instruction delivered by certified special education staff member
  - One-to-One teacher assistant
  - Consultative services from certified special education staff
3. What is the predominant service delivery model used in your general education setting for students with IEPs in your district: (rank in order from most used to least used)
- Co-Teaching
  - Small group instruction delivered by certified special education staff member
  - One-to-one teacher assistant
  - Consultative services from certified special education staff
4. What do you view as challenges in placing more students with IEPs in the general education setting for 80% or more of the school day? Each statement will be answered using a 5-point Likert scale (Strongly Agree, Agree, Neutral, Disagree, Strongly Disagree):
- Student's ability to keep up with the pace of the curriculum
  - Modifying curriculum
  - Meet social/emotional needs
  - Grading appropriately

- Behavior disrupting the learning of others
  - Making appropriate accommodations
  - Collecting data/documentation
5. What do you need to assist in placing more students with IEPs in the general education setting for 80% or more of the school day? Each statement will be answered using a 5-point Likert scale (Strongly Agree, Agree, Neutral, Disagree, Strongly Disagree):
- Professional development for general education teachers on IEPs and disabilities
  - Additional teacher assistants/paraprofessionals
  - Behavior support
  - Increased consultative time with special education teachers
  - Increased consultative time with special education related-service staff
  - Increased time for teacher planning to differentiate instruction
  - Increased time for small-group instruction with IEP students
  - Training for general education teachers on how to implement IEP accommodations
  - Training for building leadership (i.e., Principal, Assistant Principal, Dean)
  - Additional resources to implement a modified curriculum
6. Current physical delivery location for majority of related services (i.e., speech, occupational therapy, social work) provided in your district:
- General education classroom
  - Special education classroom
  - Therapy room
  - Other location: \_\_\_\_\_



In Section V, Attitudes Toward Inclusion of Students with Special Needs, Praisner identified 10 questions from the Superintendents' Attitude Survey on Integration (SASI) adapted by Stainback from the Autism Attitude Scale for Teachers.<sup>631</sup> These questions focused on the opinions of special education administrators' views on including students with more significant disabilities. Each question in this section was given a score from 5 to 1, using a 5-point Likert scale. The respondents answered using *strongly agree*, *agree*, *uncertain*, *disagree*, and *strongly disagree*. Answers with a positive attitude towards inclusion were given a score of 5 and those with the most negative attitude towards inclusion were given a score of 1. Those with answers of uncertain were considered neutral and given a score of 3. The highest total score of 50 indicated the most positive attitude towards inclusion, and the lowest score possible (10) indicated the most negative attitude towards inclusion. Each participant was assigned a total overall attitude score as well as scores on each individual statement.

Section VI was designed by Dr. Praisner to measure administrators' perceptions about appropriate placement for students based on disability category.<sup>632</sup> I updated disability categories as outlined in the IDEA to include all 13 recognized disabilities: Autism, Deaf-Blindness, Deafness, Emotional Disturbance, Hearing Impairment, Multiple Disabilities, Orthopedic Impairment, Other Health Impairment, Specific Learning Disability, Speech or Language Impairment, Traumatic Brain Injury, Visual Impairment, and Developmental Delay.<sup>633</sup> I also updated the placement options to reflect the current Illinois School Code continuum of services. The placement options included general education 80% or more of the school day, general education 40%-79% of the school day, general education less than 40% of the school day, full-

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<sup>631</sup> *Id.*

<sup>632</sup> *Id.*

<sup>633</sup> The Individuals with Disabilities Education Act, 20 U.S.C. §§ 300.301-300.306 (2007).

time special education class housed in a separate public day school, full-time special education in a separate private day school, and private residential facility in state or out of state.<sup>634</sup> Each placement option was assigned a score ranging from 1 to 6. The most restrictive placement option (private residential facility in state or out of state) was assigned a value of 1. The least restrictive placement option (general education 80% or more of the school day) was assigned a value of 6. In total respondents could score the lowest score of 13 and the highest score of 78. The higher the total score indicated the more inclusive placement recommendations and the lower the score indicated the more restrictive placement recommendations.

The PIS was modified to address special education administrators as the target demographic to gather survey results.

### Research Design

This study was completed using a quantitative survey design targeting public school special education administrators across the state of Illinois. The survey was electronically emailed to district administrators listed in the ISBE 2019-2020 school district data base. Those ISBE-identified administrators were asked to forward the e-mail to all special education administrators within the district. Participation in the study was voluntary. The survey took approximately 20-25 minutes to complete and all responses were anonymous.

### Pilot Study

I gathered expert feedback by completing a talk about using the Environment Dynamics Survey (EDS) with a practicing special education administrator. This willing participant was a

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<sup>634</sup> ILL. ADMIN. CODE 23 § 226.240 (2007).

current district special education administrator in a unit district comprised of approximately 2,000 students in Illinois. This participant had 20 years of special education administrator experience, and prior to that they were a special education classroom teacher.

The participant provided valuable feedback. I summarized the feedback. Overall, the six sections of the survey were easy to follow and allowed the participant to shift between focus areas easily. The limited number of questions that required extended answers was viewed as a positive, stating it felt like the survey was manageable to finish. Throughout the survey, when asking disability-specific questions, it was viewed as favorable to note each individual disability. Also noted in Section V, the six placement options provided were clearly seen as the required ISBE placement options connected to educational environment/LRE placement.

Suggestions for areas of improvement first included changes in Section II, Question 9, asking for formal training courses. This participant stated “That was a long time ago and this a big list.” Section III feedback included adding an option on the very first question to say “unsure” of what court oversees their school district. The participant felt even though they had been involved in a due process hearing, they were unsure of the federal court jurisdiction, stating, “My attorney would tell me that when I need to know.” Continuing in Section III, the response “unsure” suggested as a selection choice in Question 4, regarding the Supreme Court ruling on the LRE provision of the IDEA. Section IV feedback included adding an opportunity to gather information about building-level administrators (principals, assistant principals, deans) as influences on student placements.

I took the participants’ feedback into consideration. Changes were made to Section III and Section IV. Within Section III Questions 1, 2, and 4, answer choice “unsure” was added. This allowed the participant to say they didn’t know and not force them to guess. Within Section

IV under Question 5, when asking what could assist in placing more students in general education for 80% or more of the day, the option “Training for building leadership (i.e., Principal, Assistant Principal, Dean)” was added as a response choice. Overall, the feedback was valuable in further clarifying Section III, Legal System with Least Restrictive Environment.

### Procedure

The Environment Dynamics Survey (EDS) was emailed to Illinois public school administrators listed in the ISBE 2019-2020 school district database who were asked to forward the email to special education administrators within the district. Each participant received an e-mail inviting him or her to participate in the survey. Within the body of the email an explanation of the purpose of the study was provided; following the explanation, a link for the survey was provided. When each participant clicked on the link, they were directed to a separate site for the survey. The survey was compatible to be completed on mobile devices as well as computers. Participants were asked to complete the survey within one week of receiving initial notification. No identity or personal information was collected from participants.

## CHAPTER FOUR

### RESULTS

The purpose of this study was to understand Illinois special education administrators' knowledge of the LRE provision within the IDEA and their attitudes towards inclusion. This study also examined special education administrators' knowledge of the federal court system.

Participants completed a modified version of the Education Dynamics Survey (EDS) and then descriptive statistical analyses were conducted to answer the research questions. Results are presented using narratives and tables. There was a total of 171 participants in the study.

First, participants were asked about their job title within the public school. Job titles were comprised of six categories. Participants who used the "other" category gave a variety of answers; however, the most common answers in the "other" category included MTSS coordinator, LEA representative, director of student services, IEP case manager, and social worker/counselor. As indicated in Table 1, the majority of participants were either principals (52 [30.4%] participants) or special education administrators (76 [44.4%] participants). I requested the person in the building who attends IEP meetings as the local education agency (LEA) representative and who assists in making placement decisions to complete the survey. The large number of principal responses indicates that in those particular districts principals are attending IEP meetings and acting as the LEA representative guiding placement decisions.

Table 1

## Formal Job Title of LEAs

	Frequency	Percent
Did not respond	6	3.5
Other	19	11.1
Principal	52	30.4
School Psychologist	8	4.7
Special Education Administrator	76	44.4
Special Education Teacher	5	2.9
Superintendent	5	2.9
Total	171	100.0

Participants worked in a variety of settings, from special education cooperatives to unit districts. Table 2 provides detailed information about work settings. Participants reported on the student composition of their school building. Table 3 provides information regarding the percentage of students with IEPs and the percentage of IEP students included in general education 80% or more of the school day. In addition to the descriptive information solicited from participants and presented above, each research question and its corresponding analysis are presented below.

Table 2

## Participants' Employment

	Frequency	Percent
Special Education Cooperative	10	6.4
Elementary	79	46.2
High School	12	7.0
Unit District	69	40.4
Total	171	100.0

Table 3  
Reported Descriptive Information About School Setting

	N	Min	Max	Mean	SD
Reported number of students in the school building	169	28	4535	858.45	891.79
Reported average class size	169	5	32	21.77	4.30
Reported percent of students with IEPs	168	1	100	16.45	10.57
Reported percentage of students with IEPs included in regular education classrooms for at least 80% of their school day	166	0	100	53.32	34.44

### Research Question 1

The research question asked, What is Illinois special education administrators' understanding of the LRE provision outlined in the IDEA? This research question provided the foundation for participants' perceived understanding of the LRE provision outlined in the IDEA. To determine participant understanding, three quantitative questions as well as one qualitative question were asked.

#### Wording of LRE Within the Law

The first survey item used to answer this research question was, "LRE can best be described using the following key phrase(s)." Participants were able to choose one or more responses from the following choices: mainstreaming, inclusion, access to general education classroom, general education to the maximum extent appropriate, access to nondisabled peers, and use of supplemental aids/services. While several answers could be perceived as correct, the answer that most closely aligns to the legal definition of LRE in the IDEA is *general education*

to the maximum extent appropriate, which 158 (92.4%) of the 171 participants selected as at least one of their choices.

Interestingly, 12 (7%) of the 171 responses, only chose *mainstreaming* or *inclusion*. These participants were not able to identify the larger idea of the LRE provision; rather, these participants identified terms that can at times be associated with LRE but that do not describe the general concept of LRE.

#### Sufficient Knowledge of LRE

The second survey item used to answer this research question asked participants to use a Likert-type rating on the following prompt: “I feel I have sufficient knowledge and understanding of the least restrictive environment (LRE) provision outlined in the Individuals with Disabilities Education Act (IDEA) to make appropriate placement recommendations for students with IEPs.” Results are presented in Table 4, which indicate that the vast majority of participants believed that they have sufficient knowledge of the LRE provision in order to make appropriate placement decisions.

Table 4  
Belief of Sufficient Knowledge

	<i>Frequency</i>	<i>Percent</i>
Did not respond	1	.6
Strongly agree	102	59.6
Agree	62	36.3
Neutral	3	1.8
Disagree	2	1.2
Strongly disagree	1	.6
Total	171	100.0



LRE and the Supreme Court

The third survey item used to answer this research question asked participants, “Has the United States Supreme Court ruled on the LRE provision of the IDEA?” Participants were provided the choices *yes*, *no*, and *unsure*. Results are presented in Table 5.

Table 5

The United States Supreme Court Has Rule on the LRE Provisions of the IDEA

	Frequency	Percent
No	5	2.9
Unsure	61	35.7
Yes	105	61.4
Total	171	100.0

At the time of this study, the United States Supreme Court had not provided a ruling that addressed the LRE provision outlined in the IDEA. Of the 171 participants, only five (2.9%) knew there was no federal ruling from the United States Supreme Court on the LRE provision, whereas many more were either unsure or mistakenly thought there had been a ruling on LRE. A ruling from the Supreme Court would be a binding ruling for all school districts in Illinois, as well as all school districts across the nation. As presented above, participant response to Survey Item 2 indicated the vast majority, 102 participants (59.6%), strongly agreed and 62 participants (36.3%) agreed they had sufficient knowledge of the LRE provision to make appropriate placement recommendation, yet 167 participants (97.1%) were not able to correctly identify that there was no federal ruling from the United States Supreme Court on the LRE provision.

### Explanation of LRE

Finally, one qualitative survey item was used to answer this research question. This open-ended item asked participants, “Explain your understanding of the concept of LRE in your own words.” The 170 responses were coded for major themes. To begin coding, all 170 responses were read in list format three times through. At the completion of three readings, a list of reoccurring key words was generated. Two days later I again read all 170 responses twice more, and any new reoccurring key phrases were added to the list. All identified key phrases were grouped into larger themes.

Upon completion of the coding process, four themes emerged: 1) Providing IEP students with the general education curriculum, 2) Allowing IEP students access to the general education setting as much as possible, 3) Access to nondisabled peers, and 4) Students with IEPs receiving appropriate supports and services. All 170 responses were read again and the number of occurrences of each theme were tallied. Results are presented in Table 6.

Table 6

#### Identified LRE Themes

	Frequency	Percent
Providing IEP students with general education curriculum	25	14.7
Allowing IEP student access to the general education setting as much as possible	51	30.0
Access to nondisabled peers	76	44.7
IEP students receiving appropriate supports and services	40	23.5

In addition to conducting a frequency count of those participants who responded identifying one or more of the key themes, examples of supporting statements for each theme are presented below.

### Theme 1: Providing Access to the General Education Curriculum

Participant responses surrounding this theme suggested that participants felt it was important to provide students with disabilities curricular access without consideration of accommodations/modifications needed to access the curriculum. One participant stated, “Least Restrictive Environment Concept is to keep students in the general education classroom receiving instruction with general education teacher with general education curriculum as much as possible with the student still having successful academic growth.” Similarly, another participant stated, “Students who are able to attain the regular education curriculum with or without support should be included with the regular education classroom for all subjects applicable.”

### Theme 2: Access to the General Education Setting as Much as Possible

Participant responses to this theme placed heightened focus on the physical location of the classroom with no attention to curricular content or accommodations/modifications. One participant stated, “Students with disabilities should spend as much time as possible with students that do not have disabilities in a learning environment.” Another stated, “To provide an education to a child with an IEP in the general education classroom to the greatest extent given their identified needs.” Another participant again focused on the setting: “Least restrictive environment means we should always first look at the student to be able to participate in the general education setting before looking at other more restrictive settings. This is based on student need.”

### Theme 3: Access to Nondisabled Peers

Participant response to this theme focused on providing access to the student's peer group with less emphasis on the physical location of the classroom. One participant stated, "Students are educated with nondisabled peers to the maximum extent possible." Another stated, "It is the least restrictive environment where a student can be educated and make progress toward their goals while being with their nondisabled peers as much as possible."

### Theme 4: Receiving Appropriate Supports and Services

Participant response to this theme took a larger look at the student needs in connection to the physical location of the classroom and access to the peer group. One participant stated,

We need to look at the environment that is going to service goals and accommodations with the most gen ed exposure. Anytime a student is removed into a special ed setting it is more restrictive than a gen ed setting. You need to assess if student is able to make progress without being removed for portions of the day.

Another stated, "Teams must consider the least restrictive environment that will allow for student supports and services. To the greatest extent possible, students should be in a typical environment with same-aged peers."

### Other LRE Definitions

Additional participant responses fell outside the four general LRE themes. The comments listed below indicate little to no understanding of the general concept of LRE. Some participants responded with additional questions while some indicated they had little knowledge.

A high school principal in a unit district said, “I have a moderate understanding of LRE.” An elementary principal asked, “Limited knowledge: can they be a regular or partially reg. classroom or not?”

A building administrator in a unit district reused the term LRE to answer the question: “Providing the least restrictive environment in which a child with a disability learns.” A school psychologist in a cooperative identified specific disability categories that would be more likely to be removed from general education:

In determining LRE a team must weigh the benefits versus the risks. Sometimes a place is the better choice, and in that case a student may no longer have access to general education peers, but this is severe cases only and typically these are students with ED, ID, or Autism where I work.

This high school principal/superintendent admitted it was the role of the special education department to tell him/her what to do: “I have a special education coordinator and a cooperative director who keep me in check.”

### Research Question 2

Research Question 2 asked, “Is there a relationship between special education administrators’ knowledge of the federal court system and their attitudes towards inclusion?”

This question examined participant knowledge of the legal system used to litigate IEP grievances (the federal court system) and their overall disposition towards inclusive practices. To determine participants’ understanding, seven quantitative questions were asked.

The first survey item asked participants, “What federal court has jurisdiction over your school district?” Participants were provided four different circuit court choices and one “unsure” choice. All participants in this study work in Illinois public school districts. Illinois is overseen

by the United States Court of Appeals for the Seventh Circuit. Of the 171 responses, 30.4% (52 participants) identified the correct circuit court. Table 7 presents the results.

Table 7

## Which Federal Court Has Jurisdiction over Your School District?

	Frequency	Percent
Fourth Circuit	2	1.2
Sixth Circuit	2	1.2
Seventh Circuit	52	30.4
Ninth Circuit	2	1.2
Unsure	112	65.5
Total	171	100.0

The second survey item used to answer this research question asked participants, “Has the United States Supreme Court ruled on the LRE provision of the IDEA?” Participants were provided the choices *Yes*, *No*, and *Unsure*. As stated before, 5 of the 171 participants (2.9%) knew there had been no Supreme Court ruling addressing the LRE provision of the IDEA (see Table 5).

The third survey item used to answer this research question asked participants, “How do you follow current trends in special education court cases?” Participants chose one or more responses from the following options: *attend conferences*, *updates from the district superintendent or director of special education*, *read journals*, *professional organizations*, *school district attorney*, *I don’t follow court cases*, and *other*. Participants chose all that applied.

Responses were grouped into two categories, active and passive, in order to categorize participants who actively sought out information about special education law vs. those who just simply waited for others to provide them with information. Passive responses included at least

one of the following: *updates from the district superintendent or director of special education, school district attorney, and I don't follow court cases*. Active responses included those participants who seek additional information outside of their day-to-day job duties. Active responses include at least one of the following: *attend conferences, read journals, and professional organizations*.

Of the 169 responses, 119 people (69.6%) selected responses indicative of actively seek out information and 50 (29.2%) selected responses indicative of waiting to passively receive updates. The majority of active responses included reading journals and attending conferences.

#### Attitude Toward Inclusion

The fourth survey item used to answer this research question asked participants a subset of 10 questions. This subset of questions provided an overall view of the participants' attitudes and opinions towards inclusion of children with disabilities. For each question, participants chose from *strongly agree, agree, uncertain, disagree, and strongly disagree*. These ten questions came from The Principals and Inclusion Survey (PIS.)<sup>635</sup> Tables 8-17 present the results of these questions. Please note that several questions were reversed-coded based upon the valence of the statement as either positive or negative. The result of the reverse coding is such that a higher score is indicative of a more positive attitude towards children with disabilities. The majority of participants felt general education teachers should and can help and support students with significant disabilities and that those students could also benefit from regular school activities. The participants also agreed that regular school should be modified to meet the needs of

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<sup>635</sup> Cindy L. Praisner, *Attitudes of Elementary School Principals Toward the Inclusion of Students with Disabilities*, 69 COUNCIL FOR EXCEPTIONAL CHILDREN 135 (2003).

significantly disabled students, but when asked if it should be policy or law to include students with significant disabilities, the participants disagreed.

Table 8

Only Teachers with Extensive Special Education Experience Can Be Expected to Deal with Students with Severe/Profound Disabilities in a School Setting

	Frequency	Percent
Strongly Agree	3	1.8
Agree	1	.6
Uncertain	30	17.5
Disagree	99	57.9
Strongly Disagree	36	21.1
Total	169	98.8
Missing	2	1.2
Total	171	100.0

Note: *Strongly Agree* is negative.

Table 9

Schools with Both Students with Severe and Profound Disabilities and Students Without Disabilities Enhance the Learning Experiences of Students with Severe/Profound Disabilities

	Frequency	Percent
Strongly Disagree	4	2.3
Disagree	3	1.8
Uncertain	2	1.2
Agree	79	46.2
Strongly Agree	80	46.8
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Note: *Strongly Agree* is positive



Table 10

Students with Severe/Profound Disabilities Are Too Impaired to Benefit from the Activities of a Regular School

	Frequency	Percent
Strongly Agree	3	1.8
Agree	3	1.8
Uncertain	77	45.0
Disagree	3	1.8
Strongly Disagree	82	48.0
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Note: *Strongly Agree* is negative

Table 11

A Good Regular Educator Can Do a Lot to Help a Student with a Severe/Profound Disability

	Frequency	Percent
Strongly Disagree	16	9.4
Disagree	3	1.8
Uncertain	8	4.7
Agree	87	50.9
Strongly Agree	54	31.6
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Note: *Strongly Agree* is positive

Table 12

In General, Students with Severe/Profound Disabilities Should Be Placed in Special Classes/  
Schools Specifically Designed for Them

	Frequency	Percent
Strongly Agree	34	19.9
Agree	3	1.8
Uncertain	40	23.4
Disagree	68	39.8
Strongly Disagree	23	13.5
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Note: *Strongly Agree* is positive

Table 13

Students Without Disabilities Can Profit from Contact with Students with Severe/Profound  
Disabilities

	Frequency	Percent
Strongly Disagree	1	.6
Disagree	3	1.8
Agree	50	29.2
Strongly Agree	115	67.3
Total	169	98.8
Missing	2	1.2
Total	171	100.0

Note: *Strongly Agree* is positive.

Table 14

Regular Education Should Be Modified to Meet the Needs of All Students, Including Students with Severe/Profound Disabilities

	Frequency	Percent
Strongly Disagree	34	19.9
Disagree	5	2.9
Uncertain	34	19.9
Agree	67	39.2
Strongly Agree	28	16.4
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Note: *Strongly Agree* is positive

Table 15

It Is Unfair to Ask/Expect Regular Teachers to Accept Students with Severe/Profound Disabilities

	Frequency	Percent
Strongly Agree	7	4.1
Agree	5	2.9
Uncertain	11	6.4
Disagree	101	59.1
Strongly Disagree	44	25.7
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Note: *Strongly Agree* is negative

Table 16

No Discretionary Financial Resources Should Be Allocated for the Integration of Students with Severe/Profound Disabilities

	Frequency	Percent
Strongly Agree	11	6.4
Agree	8	4.7
Uncertain	2	1.2
Disagree	69	40.4
Strongly Disagree	78	45.6
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Note: *Strongly Agree* is negative.

Table 17

It Should Be Policy and/or Law That Students with Severe/Profound Disabilities Are Integrated into Regular Educational Programs and Activities

	Frequency	Percent
Strongly Disagree	55	32.2
Disagree	7	4.1
Uncertain	36	21.1
Agree	54	31.6
Strongly Agree	16	9.4
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Note: *Strongly Agree* is Positive

The fifth survey item used to answer this research question asked participants, “What do you view as challenges in your ability to place more students with IEPs in the general education setting for 80% or more of the school day?” This section was comprised of seven statements participants rated *strongly agree*, *agree*, *uncertain*, *disagree*, or *strongly disagree*. Tables 18-24 present the results of these questions.

Table 18

## Students’ Ability to Keep Up with the Pace of the Curriculum

	Frequency	Percent
Strongly Agree	42	24.6
Agree	90	52.6
Uncertain	2	1.2
Disagree	31	18.1
Strongly Disagree	3	1.8
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Table 19

## Modifying Curriculum

	Frequency	Percent
Strongly Agree	19	11.1
Agree	88	51.5
Uncertain	7	4.1
Disagree	51	29.8
Strongly Disagree	3	1.8
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Table 20

## Meeting Social/Emotional Needs

	Frequency	Percent
Strongly Agree	34	19.9
Agree	82	48.0
Uncertain	6	3.5
Disagree	42	24.6
Strongly Disagree	4	2.3
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Table 21

## Grading

	Frequency	Percent
Strongly Agree	7	4.1
Agree	32	18.7
Uncertain	12	7.0
Disagree	91	53.2
Strongly Disagree	26	15.2
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Table 22

## Individual Student Behavior Disrupting the Learning of Others

	Frequency	Percent
Strongly Agree	30	17.5
Agree	104	60.8
Uncertain	8	4.7
Disagree	25	14.6
Strongly Disagree	1	.6
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Table 23

## Ability to Provide Appropriate Accommodations Within General Education Curriculum

	Frequency	Percent
Strongly Agree	12	7.0
Agree	75	43.9
Uncertain	4	2.3
Disagree	67	39.2
Strongly Disagree	10	5.8
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Table 24

## Collecting Data/Documentation

	Frequency	Percent
Strongly Agree	10	5.8
Agree	44	25.7
Uncertain	18	10.5
Disagree	81	47.4
Strongly Disagree	15	8.8
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Of the 171 responses, 134 participants (78.3%) strongly agreed or agreed the most significant challenge in placing students in the general education setting 80% or more of the day was individual student behavior disrupting the learning of others. Grading was viewed by 117 participants (68.4%) the least significant need to place more students in the general education setting 80% or more of the school day.

The sixth survey item used to answer this research question was, “In your opinion, what does your school need to assist in placing more students with IEPs in the general education setting for 80% of more the school day?” This section was comprised of a subset of 10 statements the participants rated as *strongly agree*, *agree*, *uncertain*, *disagree*, or *strongly disagree*. Participants agreed or strongly agreed that behavior supports were the highest need to assist in placing more IEP students in the general education setting. Participants identified additional teacher assistants/paraprofessionals as the lowest need to assist in placing more IEP students in the general education setting. Tables 25 to 33 present the results from these questions.

Table 25  
Professional Development for General Education Teachers on IEPs and Disabilities

	Frequency	Percent
Strongly Agree	62	36.3
Agree	80	46.8
Uncertain	6	3.5
Disagree	16	9.4
Strongly Disagree	3	1.8
Total	167	97.7
Missing	4	2.3
Total	171	100.0

Table 26  
Additional Teacher Assistants/Paraprofessionals

	Frequency	Percent
Strongly Agree	38	22.2
Agree	59	34.5
Uncertain	11	6.4
Disagree	53	31.0
Strongly Disagree	7	4.1
Total	168	98.2
Missing	3	1.8
Total	171	100.0



Table 27

## Behavior Support

	Frequency	Percent
Strongly Agree	66	38.6
Agree	77	45.0
Uncertain	9	5.3
Disagree	15	8.8
Strongly Disagree	1	.6
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Table 28

## Increased Consultative Time with Special-Education-Related Service Staff

	Frequency	Percent
Strongly Agree	35	20.5
Agree	90	52.6
Uncertain	12	7.0
Disagree	30	17.5
Strongly Disagree	1	.6
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Table 29

## Increased Time for Teacher Planning to Differentiate Instruction

	Frequency	Percent
Strongly Agree	55	32.2
Agree	87	50.9
Uncertain	8	4.7
Disagree	17	9.9
Strongly Disagree	1	.6
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Table 30

## Increased Time for Small Group Instruction with IEP Students

	Frequency	Percent
Strongly Agree	33	19.3
Agree	71	41.5
Uncertain	18	10.5
Disagree	45	26.3
Strongly Disagree	1	.6
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Table 31

## Training for General Education Teachers on How to Implement IEP Accommodations

	Frequency	Percent
Strongly Agree	60	35.1
Agree	76	44.4
Uncertain	6	3.5
Disagree	24	14.0
Strongly Disagree	2	1.2
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Table 32

## Training for Building Leadership (i.e., Principal, Assistant Principal, Dean)

	Frequency	Percent
Strongly Agree	35	20.5
Agree	74	43.3
Uncertain	12	7.0
Disagree	41	24.0
Strongly Disagree	6	3.5
Total	168	98.2
Missing	3	1.8
Total	171	100.0

Table 33

## Additional Curricular Resources to Implement a Modified Curriculum

	Frequency	Percent
Strongly Agree	34	19.9
Agree	97	56.7
Uncertain	12	7.0
Disagree	23	13.5
Strongly Disagree	2	1.2
Total	168	98.2
Missing	3	1.8
Total	171	100.0

The seventh survey item used to answer this research question asked participants to select the most appropriate education environment placement for students with each of following disability categories: Autism, Deaf-Blindness, Deafness, Emotional Disability, Hearing Impairment, Multiple Disabilities, Developmental Delay, Orthopedic Impairment, Other Health Impairment, Specific Learning Disability, Speech or Language Impairment, Traumatic Brain Injury, and Visual Impairment. Tables 34-46 present the results. When rating each disability category, participants chose from the following:

- Private residential facility in state or out of state
- Full-time special education in a separate private day school
- Full-time special education class housed in a separate public day school
- General education less than 40% of the school day
- General education 40%-79% of the school day
- General education 80% or more of the school day

The most restrictive placement option, “private residential facility in state or out of state,” was only chosen as an option by participants for students with low-incidence disabilities of deafness, deaf and blind, traumatic brain injury, and visual impairments. Of the remaining disability

categories, no participants chose such a restrictive placement option. Participants only chose the least restrictive placement options within the general education setting for disability categories of other health impairment, speech, and specific learning disability.

Table 34

## Autism

	Frequency	Percent
Full-time special education in a separate private day school	1	.6
Full-time special education class housed in a separate public day school	3	1.8
General education less than 40% of the school day	17	9.9
General education 40-79% of the school day	78	45.6
General education 80% or more of the school day	61	35.7
Total	160	93.6
Missing	11	6.4
Total	171	100.0

Table 35

## Deaf and Blind

	Frequency	Percent
Private residential facility in state or out of state	4	2.3
Full-time special education in a separate private day school	9	5.3
Full-time special education class housed in a separate public day school	20	11.7
General education less than 40% of the school day	22	12.9
General education 40%-79% of the school day	40	23.4
General education 80% or more of the school day	61	35.7
Total	156	91.2
Missing	15	8.8
Total	171	100.0

Table 36

## Deafness

	Frequency	Percent
Private residential facility in state or out of state	1	.6
Full-time special education in a separate private day school	2	1.2
Full-time special education class housed in a separate public day school	17	9.9
General education less than 40% of the school day	10	5.8
General education 40%-79% of the school day	37	21.6
General education 80% or more of the school day	89	52.0
Total	156	91.2
Missing	15	8.8
Total	171	100.0

Table 37

## Emotional Disturbance

	Frequency	Percent
Full-time special education in a separate private day school	4	2.3
Full-time special education class housed in a separate public day school	11	6.4
General education less than 40% of the school day	30	17.5
General education 40%-79% of the school day	62	36.3
General education 80% or more of the school day	53	31.0
Total	160	93.6
Missing	11	6.4
Total	171	100.0

Table 38

## Hearing Impairment

	Frequency	Percent
Full-time special education in a separate private day school	1	.6
Full-time special education class housed in a separate public day school	1	.6
General education less than 40% of the school day	1	.6
General education 40%-79% of the school day	23	13.5
General education 80% or more of the school day	134	78.4
Total	160	93.6
Missing	11	6.4
Total	171	100.0

Table 39

## Multiple Disabilities

	Frequency	Percent
Full-time special education in a separate private day school	5	2.9
Full-time special education class housed in a separate public day school	10	5.8
General education less than 40% of the school day	48	28.1
General education 40%-79% of the school day	61	35.7
General education 80% or more of the school day	35	20.5
Total	159	93.0
Missing	12	7.0
Total	171	100.0

Table 40

## Developmental Delay

	Frequency	Percent
Full-time special education class housed in a separate public day school	4	2.3
General education less than 40% of the school day	21	12.3
General education 40%-79% of the school day	46	26.9
General education 80% or more of the school day	90	52.6
Total	161	94.2
Missing	10	5.8
Total	171	100.0

Table 41

## Orthopedic Impairment

	Frequency	Percent
Full-time special education class housed in a separate public day school	1	.6
General education less than 40% of the school day	1	.6
General Education 40%-79% of the school day	16	9.4
General education 80% or more of the school day	141	82.5
Total	159	93.0
Missing	12	7.0
Total	171	100.0

Table 42

## Other Health Impairment

	Frequency	Percent
General education less than 40% of the school day	3	1.8
General education 40%-79% of the school day	23	13.5
General education 80% or more of the school day	135	78.9
Total	161	94.2
Missing	10	5.8
Total	171	100.0

Table 43

## SLD

	Frequency	Percent
General education 40%-79% of the school day	56	32.7
General education 80% or more of the school day	105	61.4
Total	161	94.2
Missing	10	5.8
Total	171	100.0

Table 44

## Speech

	Frequency	Percent
General education less than 40% of the school day	1	.6
General education 40%-79% of the school day	3	1.8
General education 80% or more of the school day	158	92.4
Total	162	94.8
Missing	9	5.2
Total	171	100.0

Table 45

## Traumatic Brain Injury (TBI)

	Frequency	Percent
Private residential facility in state or out of state	2	1.2
Full-time special education in a separate private day school	3	1.8
Full-time special education class housed in a separate public day school	7	4.1
General education less than 40% of the school day	39	22.8
General education 40%-79% of the school day	63	36.8
General education 80% or more of the school day	41	24.0
Total	155	90.7
Missing	16	9.4
Total	171	100.0



Table 46

## Visual Impairment

	Frequency	Percent
Private residential facility in state or out of state	1	0.6
Full-time special education class housed in a separate public day school	3	1.8
General education less than 40% of the school day	3	1.8
General education 40%-79% of the school day	34	19.9
General education 80% or more of the school day	119	69.6
Total	160	93.6
Missing	11	6.4
Total	171	100.0

A correlational analysis was conducted in order to examine relationships among key variables in this study and in order to re-analyze some of Praisner's<sup>636</sup> findings. As indicated by Table 47, there was a moderate, significant correlation between self-reported attitudes and placement decisions such that the more positive one's attitude is toward special education, the less restrictive one feels placement decisions should be. This finding replicates the work of Praisner.<sup>637</sup> There is also a moderate, significant correlation between attitudes and self-reported knowledge of LRE such that the more positive one's attitudes are toward special education, the greater they feel their LRE knowledge is. Praisner<sup>638</sup> found a relationship between the number of years in administration and attitude, but that was not replicated with this dataset. Interestingly, there was a correlation between the total number of students in a school and self-reported knowledge of LRE, which indicates that the larger the school in which an administrator works, the more confident they are in their own LRE knowledge.

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<sup>636</sup> *Id.*

<sup>637</sup> *Id.*

<sup>638</sup> *Id.*

Table 47  
Correlation

Variable	2.	3.	4.	5.	6.	7.	8.
Opinions/Attitude	.267***	-.031	.076	.009	-.033	-.031	.233***
Decisions	--	-.037	-.048	-.123	.126	.138	.143
Average Class Size		--	.342**	-.288**	-.109	.016	.053
Number of Students in Building			--	-.043	-.035	.041	.176*
Percent of Students with IEPs				--	-.191*	.052	.083
Percent of IEP Students in General Ed 80% or More of Day					--	-.130	-.127
Years as Sp Ed Administrator						--	.163
Self-Reported Knowledge of LRE							--

*T*-Test Results

As exploratory follow-up analyses, a series of *t* tests were conducted in order to examine if there were significant differences in attitudes and placement scores by various group categorizations. As Tables 48-50 show, there were no significant differences found for the following: correct vs. incorrect identification of which US circuit court Illinois belongs to, those who obtain legal knowledge passively vs. actively, and those who have someone close to them who has a disability vs. those who do not.

Table 48

*T* Test Comparing Those Who Correctly Identified the Seventh Circuit and Those Who Did Not

	Correct			Incorrect			<i>t</i> -test	Sig.
	<i>n</i>	Mean	s.d.	<i>n</i>	Mean	s.d.		
Attitude	52	29.69	6.21	116	29.21	5.43	-.503	.616
Placement	49	70	5.56	102	69.59	6.16	-.387	.699

Table 49

*T* Test Comparing Those Who Obtain Legal Knowledge Passively vs. Actively

	Passive			Active			<i>t</i> -test	Sig.
	<i>n</i>	Mean	s.d.	<i>n</i>	Mean	s.d.		
Attitude	49	28.79	4.74	118	29.55	6.01	-.783	.435
Placement	43	68.44	7.21	107	70.16	5.30	-1.61	.108

Table 50

*T* Test Comparing Those Who Had a Close Relative with a Disability vs. Those Who Did Not

	No			Yes			<i>t</i> -test	Sig.
	<i>n</i>	Mean	s.d.	<i>n</i>	Mean	s.d.		
Attitude	54	28.50	5.29	114	29.77	5.81	-1.36	.175
Placement	51	70.16	6.52	100	69.44	5.66	.687	.493

## CHAPTER FIVE

### DISCUSSION

The purpose of this study was to determine Illinois special education administrators' knowledge of the LRE provision within the IDEA. Additionally, I examined special education administrators' knowledge of the federal court system and their attitudes towards inclusion. A modified version of the Environment Dynamics Survey (EDS) was distributed to district administrators listed in the ISBE 2019-2020 school district database via Qualtrics. In total the sample contained 171 participants.

The major sections of this chapter include the findings for each of the two research questions, study limitations, and recommendations for further study. Finally, I present implications for the study's findings and guidance for practicing Illinois special education administrators for implementing the LRE provision within the IDEA.

#### Special Education Administrators' Knowledge of LRE

This study focused on Illinois special education administrators' overall knowledge of the LRE mandate outlined in the IDEA as well as their overall attitude towards inclusion. Additionally, the participants' knowledge of the federal court system was assessed. The research was guided by two research questions. The first was, What is Illinois special education administrators' understanding of the LRE provision outlined in the IDEA?

When provided key phrases to describe LRE, the majority of participants in the study were able to identify the key phrase *general education to the maximum extent appropriate*.

Overall, most participants rated themselves as having “sufficient” knowledge of LRE to make placement recommendations. It was found that the more positive the participants’ attitude towards special education becomes, the more positive the participant’s self-reported knowledge of the LRE mandate became. Having sufficient knowledge of the concept in special education would include any additional legal guidance on the topic. The majority of participants believed the Supreme Court had ruled on a case(s) involving the LRE mandate, when in fact there has never been an LRE ruling issued by the Supreme Court. A participant with sufficient knowledge of broad special education topics, including LRE, would be aware if there were any legally binding rulings from the Supreme Court. To take that logic a step further, the participant should know that absent a Supreme Court ruling on the topic, for purposes of daily practice within their school district, they should look to Seventh Circuit Court of Appeals decisions for guidance, yet the majority of participants in this study were not able to identify the correct federal court with jurisdiction over their school district.

#### Links to Existing Research and Practical Implications

Crockett and Kauffman reviewed the implementation of the LRE mandate and found that special education programs across the country had varying definitions of LRE, including: “placement in public schools,” “mainstreaming,” and “the place where parents think the child will be best educated.”<sup>639</sup> Monroe found that the reauthorization of IDEA made legal changes to the law, but no changes were made to the LRE mandate.<sup>640</sup> Congress continues to remain silent on LRE since its inception in 1975. Today the IDEA remains unchanged in the arena of LRE; the only additional guidance is provided via the federal court system rulings. I found that as

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<sup>639</sup> Crockett & Kauffman, *supra* note 24, at 133.

<sup>640</sup> Monroe, *supra* note 15, at 593.

participants' overall attitudes towards special education improved, their placement recommendations became more inclusive. This is similar to the finding in Praisner's<sup>641</sup> study. Praisner<sup>642</sup> also found a correlation between years of experience and positive attitude towards inclusion that this research was not able to replicate. This study did find a positive correlation that as the size of the school district grew larger, the more positive attitude towards inclusion became.

There are various key factors Illinois special education administrators should keep in mind when making placement decisions. Placement decisions should be reviewed at least annually by the IEP team. LRE placement also applies to the nonacademic setting. Supplementary aids and services must be implemented for nonacademic and extracurricular activities. Some of these activities could include, but are not limited to, clubs, transportation, field trips, recess, sports, lunch, and counseling. When student behaviors are so disruptive that they significantly impact the ability of other students to learn, then IEP teams are not required to provide full-time general education placement even with supplemental aids and services; they may consider a more restrictive placement that better meets the student's behavioral needs. LRE also requires students with IEPs have access to the same state and local assessments as their nondisabled peers. The IEP team determines the individual level of participation in these assessments as well as accommodations and modifications needed. For the small percentage of students with IEPs unable to participate in the same grade-level assessments, the IEP team must describe what alternative assessments to utilize.

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<sup>641</sup> Praisner, *supra* note 635, at 135.

<sup>642</sup> *Id.*

Using guidance from IHOs as well as Seventh Circuit decisions, special education administrators must be aware there is not one universal LRE test. Using information from those decisions, they should implement this standard guidance. First identify the student's deficit areas and individual IEP goals. Using the student's identified needs, the team must first consider the general education setting with supplemental aids and services. The IEP team must consider various ways in which to deliver the supplemental aids and services in the general education setting. Teams must "think outside the box", just because a service or program has only been delivered in one specific way in the past doesn't mean something new might not be needed for the individual student. Supports and services in the general education setting can include modifications to the general education curriculum, and the IEP should devise a plan to carry out those modifications. Teams should not fall into the trap of "this is the way we have always done it." Once it has been determined that due to the nature and severity of the disability those identified supports and services cannot be delivered in the general education setting, then consideration of special classes, separate schooling, or other placement options should be reviewed. When a placement recommendation is outside of the student's home school, the IEP team must consider the placement options as close to the student's home as possible. Even though a student may not have services delivered within their home school general education classroom, this still means the IEP team must consider opportunities for the student to interact with their nondisabled peers.

#### Knowledge of Court System and Attitudes

The second research question addressed in this study was, Is there a relationship between special education administrators' knowledge of the federal court system and their attitudes

towards inclusion? Overall, participants had little knowledge of the federal court system. First, the majority of participants were unable to identify that the United States Supreme Court has never provided a ruling in a case surrounding LRE. Additionally, the majority of participants were unable to identify the United States Court of Appeals for the Seventh Circuit as the court of appeals for Illinois school districts.

More disturbing than the lack of understanding of the federal court system were participant attitudes toward inclusion. In this study, attitudes towards inclusion became more negative when asked about students with severe/profound disabilities. Nearly half of participants were unsure whether students with severe and profound disabilities were too impaired to benefit from activities of regular school. When requiring the general education curriculum to be modified for severe/profound disabilities, participants had a more negative view of inclusion. More specifically, when participants were asked, “Should there be a policy and/or law that students with severe/profound disabilities be integrated into regular education programs and activities,” the majority of participants disagreed or were uncertain.

Attitudes towards inclusion were dependent on the types of disability. Again, the more severe the disability, the less favorable participants viewed placement in the general education classroom for 80% or more of the day. Disability categories such as Traumatic Brain Injury, Deaf and Blind, Autism, and Multiple Disabilities were rated as requiring a more restrictive placement option. Disability categories such as Hearing Impairment, Other Health Impairment, Specific Learning Disability, and Visual Impairment were viewed as more favorable placements in the general education setting 80% or more of the school day.

It was found that knowledge of the federal court system does not have an impact on participants’ attitudes towards inclusion recommendations. Further, it was examined to see what



other factors may impact attitudes towards inclusion recommendations. It was found the manner in which participants receive court case outcomes, either actively or passively, does not have an impact on the participants' attitude towards inclusion recommendations. Additionally, if the participant personally knows someone with a disability, this factor does not impact their recommended placement decision. Overall, the factor that influences participants to make more inclusive LRE placement recommendations is the participants' overall self-reported attitude.

Overall, participants have a positive view on their own knowledge of the LRE mandate yet have very little background knowledge of the federal court system that oversees the mandate and provides additional guidance for clarification of the LRE mandate. Overall, there are favorable views for some inclusive practices, but a detailed analysis of the individual disability categories shows a discrepancy based on disability.

#### Links to Existing Research and Practical Implications

Upon reviewing LRE court cases, Marx found IEP teams should have knowledge of case law and use that knowledge to create a bank of guiding questions to support IDEA-compliant LRE discussions.<sup>643</sup> Special education administrators should have an understanding of the legal path cases can take when one party disagrees with educational placement. They should understand disagreements are settled in the federal court system, not state court systems. They should first have understanding of recent independent hearing officer (IHO) decisions in Illinois and determine a source to keep up to date as cases are decided. IHO decisions show that LRE compliance is not achieved through placing a student in a specific location, for example, the special education classroom or the general education classroom. Rather, LRE compliance is

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<sup>643</sup> Marx et al., *supra* note 334, at 45.

achieved when placement is driven by the individual supports and services needed. Upon identification of those supports and services, then initial discussion must begin with providing those services in the general education setting. When those supports and services cannot be provided in the general education setting, then the team should begin to look at more restrictive placement options. In addition to tracking IHO decisions, administrators must be active in seeking Seventh Circuit decisions. When working in a school building, administrators must be active seekers of updated court decisions. They must identify attorney groups or state organizations to use to check on updates regarding recent court decisions.

Sailor and McCart found that students with less significant disabilities were receiving more inclusive special education programs, whereas those students with more significant disabilities were spending the majority of their school day in a more restrictive setting outside the general education setting.<sup>644</sup> Cramer found when school administrators put a focus on LRE through the use of an LRE rubric implemented during classroom walkthroughs, the rate of including more students in the general education setting increased.<sup>645</sup>

### Study Limitations

This research study's limitations should be noted. First, this study only applies to special education administrators in Illinois. The IDEA is a federal law; therefore, this participant sample is not representative of all practicing special education administrators in the United States. Second, this study was conducted via an online self-reporting survey. This is a great way to gather data from numerous participants across a large geographic region, but it requires the participants to engage with their computer for an extended amount of time. This format also

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<sup>644</sup> Sailor & McCart, *supra* note 625, at 55.

<sup>645</sup> Cramer, *supra* note 627, at 41.

prohibits participants from asking clarifying questions. This format also can be problematic if the participant experiences any technology challenges; they may not come back later to complete the survey.

Another limitation of the study is the self-reporting survey relies on the honesty of each participant. Given the targeted participant pool, special education administrators, they may have answered questions regarding placement recommendations to align with what is more socially acceptable today. Even given these individual limitations, the study results provide valid information to understand special education administrators' knowledge of the federal court system, knowledge of LRE, and their attitudes towards inclusion.

#### Recommendations for Further Study

Further studies could examine the LRE knowledge and attitudes of special education administrators outside of Illinois. A comparison analysis of the knowledge base and attitudes of special education administrators within the other parts of the Seventh Circuit Court of Appeals, obtaining samples from both Wisconsin and Indiana, would provide an overall view of practicing special education administrators within the Seventh Circuit. A comparison of special education administrators among the three separate states could identify trends and differences within the Seventh Circuit. Research could also be extended to compare the special education administrators' knowledge and attitudes within the Seventh Circuit to special education administrators in a circuit that currently uses a standard LRE test. Those circuits could include the Fourth, Fifth, Sixth, or Ninth Circuit.

Research could be conducted to determine what factors influence people to have a more favorable attitude towards inclusion. A qualitative study could be conducted on what has shaped

attitudes. Research could include looking further at each individual disability category to determine factors that influence placement recommendations, while also reviewing and comparing the current placement options available for participants within their own school building based on individual disability category.

### Guidance for Illinois Special Education Administrators

The results of this study can be applied to practicing Illinois special education administrators by following the practical implications listed below to ensure compliance with the IDEA's LRE provision.

- First, goals and objectives must be determined as a baseline for the formulation of the remainder of the IEP
- Identify needed supports and services before discussing the location of service delivery
- When discussing the location of service delivery, begin with delivery in the general education setting
- Identify the continuum of placement options available within the home school building as well as those outside of the home school building
- When placement options outside of the home school building are discussed, the team must consider proximity to the student's home
- LRE also applies all nonacademic and extracurricular activities
- Follow United States Seventh Circuit Court of Appeals LRE rulings
- Follow United States Supreme Court LRE rulings
- Terms such as "mainstreaming" or "inclusion" do not determine LRE; rather, it's the IEP and the review of the individual student's specific needs that determine LRE

- Placement must be reviewed at least annually

Professional development should be provided to special education administrators on an annual basis to ensure LRE compliance. The professional development should address three areas: review of the IDEA and the court system, continuum of placement options, and the district/building LRE data. First, the key concepts of LRE as outlined within IDEA should be reviewed as well as the current ISBE Policy Statement on LRE. In conjunction with a review of IDEA, recent Seventh Circuit Court of Appeals cases should be reviewed. Additionally, should an LRE case ever be ruled on by the Supreme Court of the United States, these cases(s) should also be reviewed. The training should also review the continuum of placement options available within the building, school district, local community, and the state. Through this process, special education administrators can generate a large list of placement options, both public and private, to ensure placement recommendations are individualized to the unique needs of each individual student. Finally, detailed student LRE data should be analyzed from the prior school year. In a detailed review of data, historical trend data of placement options should be reviewed from the last five years. A combination approach for professional development providing the big-picture legal requirements with the individual district/building LRE data provides the administrator the opportunity for practical application within their own job setting.

### Conclusion

In summary, times have changed since the *Beattie* decision. All students, regardless of disability severity, must be provided an IEP that outlines supports and services, with a discussion surrounding the location of those services. Protections that finally came to be federal law in 1975 outlined key special education requirements, one of those being LRE. Today, the federal

requirements of LRE have remained unchanged. Numerous court cases have made their way from independent hearing officers through the federal court system, stopping short of any rulings from the Supreme Court of the United States.

The results of this study show special education administrators in Illinois have an overall favorable view of including students with disabilities. This study showed the biggest factor to influence more inclusive placement recommendations is in fact the administrator's overall attitude towards special education. Knowledge of the federal court system was shown not to influence the participants' placement recommendations. Additionally, factors such as years of experience, the ways in which participants obtain legal knowledge, and having a personal experience with someone with a disability do not influence participants' overall attitudes towards inclusion. Identifying the factors that directly make participants reflect a more positive attitude towards special education students is definitely an area that warrants additional research. Regardless of attitude towards special education, participants displayed a tendency to recommend more restrictive placement options for those students with severe/profound disabilities. Yet in such a litigious field as special education, their knowledge of the court system used for settling LRE disputes is lacking.

APPENDIX  
ENVIRONMENT DYNAMICS SURVEY

## Environment Dynamics Survey

The purpose of this survey is to determine the opinions of special education administrators around least restrictive environment and to gather information about the types of training and experience that special education administrators have. There are no right or wrong answers so please address the questions to the best of your knowledge and provide us with what **you believe**.

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### SECTION I- Demographic Information

The following information will be only be used to describe the population being studied.

1. What is your current job title?

- Special Education Administrator
- Special Education Teacher
- Psychologist
- Social Worker/Counselor
- Other \_\_\_\_\_

2. District Composition:

- Elementary
- High School
- Unit District
- Cooperative

3. Approximate number of all students (general education and special education) you service/oversee:

\_\_\_ 0-1000 or more

4. Average class size for all students:

\_\_\_ 0- 40 or more

5. Approximate percentage of students with IEPs in your district/building: (*Do not include gifted*)

\_\_\_ 0-21% or more

6. Approximate number of students with IEPs in your district/building that are included in regular education classrooms for at least 80% of their school day: (*Do not include gifted*)

\_\_\_ 0-100%

### SECTION II- Training and Experience

1. Years as a special education administrator:

0-5                      6-10                      11-15                      16-20                      21 or more

2. What was your role in the school system prior to becoming a special education administrator:

- General Education Teacher
- Special Education Teacher
- General Education Administrator
- Related Service Provider (speech, OT, PT, guidance counselor, social worker)
- Other: \_\_\_\_\_



3. Total years of administrative experience:

0-5                      6-10                      11-15                      16-20                      21 or more

4. In graduate training how many education law related courses did you take?

\_\_\_ 0-10

5. In graduate training did you take a course where you learned about special education law?

Yes

No

6. Do you have personal experience with (an) individual(s) with a disability outside the school setting, i.e. family member, friend, etc.?    No    Yes

If yes, please indicate relationship to you.

Self

Immediate family member

Extended family member

Friend

Neighbor

Other: \_\_\_\_\_

7. Think about your overall experience with students with disabilities as you answer each question below. Although individual students and their characteristics are always a consideration, in general, what has your experience been with the following categories of students within the least restrictive environment?

Disability Type	Somewhat		No	Somewhat	
	Negative Experience	Negative Experience		Positive Experience	Positive Experience
Autism					
Deaf-Blindness					
Deafness					
Emotional Disturbance					
Hearing Impairment					
Multiple Disabilities					
Orthopedic Impairment					
Other Health Impairment					
Specific Learning Disability					
Speech or Language Impairment					
Traumatic Brain Injury					
Visual Impairment					
Developmental Delay					

### SECTION III- Legal System with Least Restrictive Environment

1. I feel I have sufficient knowledge and understanding of the least restrictive environment (LRE) provision outlined in The Individuals with Disabilities Education Act (IDEA) to make appropriate placement recommendations for students with IEPs.

Strongly agree

Agree

Neutral

Disagree

Strongly disagree

2. Explain your understanding of the concept of LRE in your own words.

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3. LRE can best be described using the following key phrase(s)
  - Mainstreaming
  - Inclusion
  - Access to general education classroom
  - General education to the maximum extent appropriate
  - Access to nondisabled peers
  - Use of supplemental aids and services
  
4. What Federal Court has jurisdiction over your school district?
  - 4<sup>th</sup>
  - 6<sup>th</sup>
  - 7<sup>th</sup>
  - 9<sup>th</sup>
  - Unsure
  
5. How do you follow current trends in special education court cases? Check all those that apply
  - Attend conferences
  - Updates from the district superintendent or director of special education
  - Read journals
  - Professional organizations
  - School district attorney
  - I don't follow court cases
  - Other, please specify \_\_\_\_\_
  
6. The United States Supreme Court has ruled on the LRE provision of the IDEA?
  - Yes
  - No
  - Unsure
  
7. Have you been the special education administrator in an IEP team decision that recommended a more restrictive placement that parents did not agree; which resulted in involving attorneys and/or hearing officers?
  - Yes
  - No
  
8. Have you been the special education administrator overseeing a LRE due process case?
  - Yes
  - No
  
9. If you have been part of a due process hearing for LRE, how has that shaped your knowledge and perception of LRE? \_\_\_\_\_

## SECTION IV- Classroom Supports for Students with IEPs

1. Pick the overall percentage of yearly professional development time allocated annually in your district to supporting students with disabilities?

0-11%    12%-20%    21%-30%    31%-40%    41%-50%    More than 50%

2. What service delivery models are provided in your general education settings for students with IEPs in your district (pick all those that apply):

Co-Teaching

Small group instruction delivered by certified special education staff member

One-to-One teacher assistant

Consultative services from certified special education staff

3. What is the predominant service delivery model used in your general education setting for students with IEPs in your district (rank in order from most used to least used 1=Most Used, 4=Least Used):

Co-Teaching

Small group instruction delivered by certified special education staff member

One-to-One teacher assistant

Consultative services from certified special education staff

4. What do you view as challenges in your ability to place more students with IEPs in the general education setting for 80% or more of the school day:

Strongly Agree    Agree    Uncertain    Disagree    Strongly Disagree

A.) Students ability to keep up with the pace of the curriculum

B.) Modifying curriculum.

C.) Meeting social/emotional needs

D.) Grading

E.) Individual student behavior disrupting the learning of others

F.) Ability to appropriate accommodations within general education curriculum

G.) Collecting data / documentation

5. In your opinion, what does your school need to assist in placing more students with IEPs in the general education setting for 80% of more the school day:

	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree
A.) Professional development for general education teachers on IEPs and disabilities					
B.) Additional teacher assistants/paraprofessionals					
C.) Behavior Support					
D.) Increased consultative time with special education teachers					
E.) Increased consultative time with special education related service staff					
F.) Increased time for teacher planning to differentiate instruction					
G.) Increased time for small group instruction with IEP students					
H.) Training for general education teachers on how to implement IEP accommodations					
I.) Training for building leadership (ie. Principal, Assistant Principal, Dean)					
I.) Additional curricular resources to implement a modified curriculum					

6. Select the current physical delivery location for majority of related services (ie: speech, occupational therapy, social work) provided in your district:

- General education classroom
- Special education classroom
- Therapy room
- Other location: \_\_\_\_\_

## SECTION V- Attitudes Toward Inclusion of Students with Special Needs

Please mark your response to each item using the following scale:

	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree
1. Only teachers with extensive special education experience can be expected to deal with students with severe/profound disabilities in a school setting.					
2. Schools with both students with severe and profound disabilities and students without disabilities enhance the learning experiences of students with severe/profound disabilities.					
3. Students with severe/profound disabilities are too impaired to benefit from the activities of a regular school.					
4. A good regular educator can do a lot to help a student with a severe/profound disability.					
5. In general, students with severe/profound disabilities should be placed in special classes/schools specifically designed for them.					
6. Students without disabilities can profit from contact with students with severe/profound disabilities.					
7. Regular education should be modified to meet the needs of all students including students with severe/profound disabilities.					
8. It is unfair to ask/expect regular teachers to accept students with severe/profound disabilities.					
9. No discretionary financial resources should be allocated for the integration of students with severe/profound disabilities.					
10. It should be policy and/or law that students with severe/profound disabilities are integrated into regular educational programs and activities.					

## SECTION VI- Most Appropriate Placements for Students with Disabilities

Although individual characteristics would need to be considered, please mark the placement that, in general, **you believe** is most appropriate for students with the following disabilities:

### Autism

- Private residential facility in state or out of state
- Full time special education in a separate private day school
- Full time special education class housed in a separate public day school
- General Education less than 40% of the school day
- General Education 40%-79% of the school day
- General Education 80% or more of the school day

### Deaf-Blindness

Private residential facility in state or out of state  
 Full time special education in a separate private day school  
 Full time special education class housed in a separate public day school  
 General Education less than 40% of the school day  
 General Education 40%-79% of the school day  
 General Education 80% or more of the school day

#### **Deafness**

Private residential facility in state or out of state  
 Full time special education in a separate private day school  
 Full time special education class housed in a separate public day school  
 General Education less than 40% of the school day  
 General Education 40%-79% of the school day  
 General Education 80% or more of the school day

#### **Emotional Disturbance**

Private residential facility in state or out of state  
 Full time special education in a separate private day school  
 Full time special education class housed in a separate public day school  
 General Education less than 40% of the school day  
 General Education 40%-79% of the school day  
 General Education 80% or more of the school day

#### **Hearing Impairment**

Private residential facility in state or out of state  
 Full time special education in a separate private day school  
 Full time special education class housed in a separate public day school  
 General Education less than 40% of the school day  
 General Education 40%-79% of the school day  
 General Education 80% or more of the school day

#### **Multiple Disabilities**

Private residential facility in state or out of state  
 Full time special education in a separate private day school  
 Full time special education class housed in a separate public day school  
 General Education less than 40% of the school day  
 General Education 40%-79% of the school day  
 General Education 80% or more of the school day

#### **Developmental Delay**

Private residential facility in state or out of state  
 Full time special education in a separate private day school  
 Full time special education class housed in a separate public day school  
 General Education less than 40% of the school day  
 General Education 40%-79% of the school day  
 General Education 80% or more of the school day

#### **Orthopedic Impairment**

Private residential facility in state or out of state  
 Full time special education in a separate private day school  
 Full time special education class housed in a separate public day school  
 General Education less than 40% of the school day  
 General Education 40%-79% of the school day  
 General Education 80% or more of the school day

#### **Other Health Impairment**

Private residential facility in state or out of state  
Full time special education in a separate private day school  
Full time special education class housed in a separate public day school  
General Education less than 40% of the school day  
General Education 40%-79% of the school day  
General Education 80% or more of the school day

**Specific Learning Disability**

Private residential facility in state or out of state  
Full time special education in a separate private day school  
Full time special education class housed in a separate public day school  
General Education less than 40% of the school day  
General Education 40%-79% of the school day  
General Education 80% or more of the school day

**Speech or Language Impairment**

Private residential facility in state or out of state  
Full time special education in a separate private day school  
Full time special education class housed in a separate public day school  
General Education less than 40% of the school day  
General Education 40%-79% of the school day  
General Education 80% or more of the school day

**Traumatic Brain Injury**

Private residential facility in state or out of state  
Full time special education in a separate private day school  
Full time special education class housed in a separate public day school  
General Education less than 40% of the school day  
General Education 40%-79% of the school day  
General Education 80% or more of the school day

**Visual Impairment**

Private residential facility in state or out of state  
Full time special education in a separate private day school  
Full time special education class housed in a separate public day school  
General Education less than 40% of the school day  
General Education 40%-79% of the school day  
General Education 80% or more of the school day

*Thank you for taking the time to answer all of the questions on this survey. I appreciate your assistance with this study!*