

## Special Education Fact Sheet

### LEAST RESTRICTIVE ENVIRONMENT

#### What is the “Least Restrictive Environment” requirement?

Under federal and state law, children with disabilities must be educated in the “Least Restrictive Environment” (LRE). The Least Restrictive Environment requirement means that to the maximum extent appropriate for each child, children with disabilities must be educated with children who do not have disabilities, and children with disabilities must be educated in regular education classrooms unless the nature or severity of the disability prevents them from receiving an appropriate education in that setting, even with the use of supplementary aids and services. The requirement also includes a strong preference, though not an absolute mandate, for students with disabilities to be able to attend the schools they would have attended if they were not disabled.

#### What does LRE mean for my child?

Under the Least Restrictive Environment requirement, a child with a disability should be allowed to attend a general education class in his or her zoned school, and receive the services needed to make that placement work, unless there is proof that he or she cannot receive educational benefits in that setting. If he or she cannot receive educational benefits in that setting, he or she should be educated in a context that provides access to general education students and general education curriculum to the maximum extent appropriate to the student’s individual needs.

The Least Restrictive Environment is related to, but different from, the concepts of *inclusion*, *mainstreaming*, and *integration*. **Inclusion** means that primary instruction and provision of appropriate special education services are provided in (i) an age-appropriate general education class (ii) in the student’s home school (iii) with appropriate additional supports for the student and the student’s teacher.<sup>1</sup> Importantly, inclusion does not require a child with a disability to perform at the same level as his or her general education peers.

By contrast, **mainstreaming** means that a child with a disability is educated in a general education classroom for those areas of instruction in which the child can be expected to perform at the level of nondisabled peers without needing supplementary aids and services. **Integration** means that children with disabilities and children without disabilities are educated together, though not necessarily in general education classrooms.

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<sup>1</sup> This definition of inclusion comes from the New York State Education Department’s Least Restrictive Environment Implementation Policy Paper, which was updated in May 1998. Some people at the Department of Education may define inclusion differently, so it is important to clarify what they mean by inclusion when they are talking about options for your child.

The special education statute does not mention *inclusion, mainstreaming, or integration*, but does require that children with disabilities be educated in the Least Restrictive Environment. *Inclusion, mainstreaming, and integration*, may be the Least Restrictive Environment for some children, but not for others.

**I would like my child to be included in a general education classroom, but she will need a lot of support to make it work. What services can my child receive to be included?**

The services that the Department of Education (DOE) can provide will depend on your child's needs. Under state and federal law, school-based support teams, Committees on Special Education (CSE), or Integrated Service Centers (ISC) must conduct an individualized inquiry into the unique educational needs of each student with a disability to determine what supplementary aids and services are needed to enable the student to participate in the regular education environment. Some examples of supplementary aids and services that the DOE can be required to provide include: (1) one-on-one paraprofessionals; (2) consultant teacher (CT) and/or resource room [formerly, special education teacher support services (SETSS)] teachers to work with the students individually or in small groups, or to help the general education teachers modify the curriculum and work with the students appropriately; and (3) assistive technology (AT), including, for example, specially-equipped computers.

It should be noted that nothing in the state or federal statutes allows the DOE to deny your child needed services because they cost too much. For the usual supplementary aids and services that parents request to make inclusion work -- for example, a one-on-one paraprofessional or CT -- cost is not an acceptable excuse for denying services to your child.

**What if my child needs to be in a small classroom with children with similar learning difficulties?**

The Least Restrictive Environment requirement does not mean that every student with a disability must be placed in the regular education classroom regardless of individual ability and needs. The law requires that every child's educational program and placement be based on an individualized determination of the child's needs. For this reason, the DOE must make available a *range* of placement options to meet the unique educational needs of students with disabilities. There is not a *one size fits all* solution in determining what placement is the Least Restrictive Environment for each child.

If the school-based support team (or IEP team) evaluates your child and concludes that he or she will not make progress in an integrated setting, even with supplementary aids and services, then the Least Restrictive Environment for your child may be a small, segregated setting for part or all of the school day. But remember that in making this determination, the IEP team should compare the educational benefits available to your child in a general education classroom supplemented with appropriate aids and services, to the educational benefits from the special education classroom, and should also consider the possible non-academic benefits to your child from interacting with nondisabled students.

## **What should I do to have my child educated in a less restrictive environment?**

The first step is to contact your child's school-based support team, CSE, or ISC to request a meeting to consider a less restrictive placement. It is recommended that your request be made by letter, which may then be followed by a phone call, if necessary. Be persistent, and keep good records. If you do not get a meeting date in what you believe is a reasonable period of time, write or call again.

The next step is to attend the meeting. At that meeting, the first program option considered must be the regular education classroom your child would attend if not disabled. One of the first questions should be whether your child's needs – not just academic, but also social and developmental needs – can be met in a general education program in your child's home school, if needed supplementary aids and services are provided. If the answer is no, the next question should be: *What is the least restrictive environment where my child's needs can be met?*

## **What can I do if my request for a less restrictive placement is denied?**

If the DOE refuses your request for a less restrictive placement, they must provide an explanation. If you are not satisfied with their reasons, you may request mediation by contacting the CSE or ISC or a hearing before an Impartial Hearing Officer by contacting the Impartial Hearing Office at the New York City Department of Education. If you need legal assistance, you can contact New York Lawyers for the Public Interest at the number provided on this fact sheet.

At the hearing, you should be prepared to present evidence showing that your child could benefit from a less restrictive placement. This evidence could include your own testimony, testimony by your child's teachers or service providers, or evaluations by experts in education and the related therapies that your child is receiving or needs.

## **What may the Department of Education say in response to my request for a less restrictive setting?**

Be aware that the following are unacceptable excuses for denying your request for a less restrictive placement:

- Categorical statements based only on your child's diagnosed disability like, "Students with Down's Syndrome do not get paraprofessionals," or "Students with autism cannot learn in a general education environment." The DOE and the CSE must look at each child's individual needs.
- "Your child will not be able to keep up with the general education classes." There are decisions by courts and administrative officers in New York that make clear that the issue is not whether a child can achieve at the same level as the other children in his or her class, but rather, whether the child can meet the goals on his or her IEP in the general education setting.
- "Your child would need supplementary aids and services that are too expensive." As discussed above, cost is not a legitimate basis for denying your child a less restrictive placement or needed services.

### **What are some considerations to keep in mind when drafting a child's IEP?**

If you seek a less restrictive placement for your child, you often have to be assertive during the preparation of your child's IEP. If the IEP team agrees to a less restrictive placement but attempts to give your child a very standard IEP, not tailored to the needs of your child, request that they think about what specifically will be needed to make your child's program effective. For example, if your child will be participating in general education, issues to discuss include:

- Are there physical barriers to your child's full participation in general education that will require the school to make accommodations?
- Is the general education teacher experienced in educating students with disabilities, or will he or she need additional training?
- Will your child need a Consultant Teacher to help the general education teacher adapt the curriculum or teaching style?
- Will the CT teacher need specialized training; and (5) how will your child's progress be evaluated?

### **What can I do to help ensure my child's placement in the least restrictive environment is a successful one?**

Once you are satisfied with your child's IEP, whether it will actually work depends in part on factors outside your control: a supportive principal and/or flexible and creative teachers. You should attempt early on to develop a constructive relationship with these educators, and make yourself available to communicate with them regarding your child's education and any issues that may arise.

However, if you are unable to resolve issues through the school, you should turn to the CSE or the ISC, depending upon where your child is attending school. If they are unable to resolve the issues, or do not resolve them in a way that is satisfactory to you, you may want to consider the options of mediation or Impartial Hearing.

## **TIPS**

- **Keep a notebook**
  - **Record all phone conversations and in-person conferences and meetings**
  - **Keep all the papers you received from the DOE**
  - **Keep letters and envelopes**
  - **If documents are not dated, note the date you received the document on the back of the document or envelope**
- **Send all communications by certified mail or hand deliver them, asking the receiver to initial and date your copy**
- **Always**
  - **Keep a copy of everything you give to the DOE**
  - **take the name of the DOE person you're dealing with**
    - **If you can, get title, office, and detailed contact information**
    - **write it all down for future use**

**\*DUE TO THE GENERAL NATURE OF THE INFORMATION PRESENTED, THIS FACT SHEET SHOULD NOT BE REGARDED AS LEGAL ADVICE. \* Updated: 2009**