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ABSTRACT

Recent court cases which have rendered decisions as to what constitutes the least restrictive environment (LRE) for students with disabilities are discussed. Six cases, decided between 1989 and 1994, are considered, half of which were decided in favor of the parents in their quest for a less restrictive setting for their child, while the other half were won by the school districts in their petition for a more restrictive setting. The cases include: Daniel R.R. v. State Board of Education; (Christy) Greer v. Rome City School District, (Rafael) Oberti v. the Board of Education of the Borough of Clementon School District, Sacramento City Unified School District Board of Education v. Rachel Holland, Clyde K. v. Puyallup School District, and (Gregory) Urban v. Jefferson County School District. It is concluded that in the future some sort of a test will be employed to determine whether a student has been placed in the LRE. Factors that might be included in such a test are: use of supplementary aids and services, educational and noneducational benefits, effect of the child upon others, cost, and whether the student has been mainstreamed to the maximum extent possible when segregated placement is used. It also appears that when the child is young and intellectually disabled, the courts will favor regular class placement. On the other hand, older children, especially those with behavioral disorders, will be more likely removed from the mainstream. (SW)

Least Restrictive Environment and Case Law: What the Courts Are Saying About Inclusion

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Abstract

This paper discusses how court cases are refining the definition of the least restrictive environment (LRE). Six cases, decided between 1989 and 1994, are presented. Half of the cases were decided in favor of the parents in their quest for a less restrictive setting for their child, while the other half were won by the school districts in their petition for a more restrictive setting.

LRE and Case Law: What the Courts Are Saying about Inclusion

Where should students with disabilities receive their education? The major piece of special education legislation, Individual with Disabilities Education Act (IDEA, 1990) specifies that this be in the least restrictive environment. (LRE). But what did Congress mean by LRE? The courts are providing interpretation together with legal mandates in the body of case law pertaining to LRE. This paper will explore recent cases that have rendered decisions as to what constitutes the least restrictive environment.

Daniel R.R. Case

An early case upon which more recent decisions were built was *Daniel R.R. v. State Board of Education* (1989). This case was from Texas and heard by the U.S. Court of Appeals, Fifth Circuit. Daniel was a six year old boy with Downs Syndrome, who was mentally retarded and speech impaired.

Daniel had previously been enrolled in a half-day early childhood special education program. His parents requested a new placement that would provide association with non-disabled children. The school district complied with this request and placed him half-day in a regular pre-kindergarten class and the remainder of the day in the previous early childhood special education program.

Early into the school year Daniel began experiencing difficulties. According to his pre-kindergarten teacher he did not participate without constant, individual attention from the teacher or her paraeducator and failed to master any of the skills being taught in the class. By November the school district recommended that his placement be changed. It was suggested that he continue half-day in the early childhood special education program, but withdraw from the pre-kindergarten program--replacing it with the opportunity to eat lunch and participate at recess with non-disabled students.

The parents did not agree with this recommendation and asked for a due process hearing, which eventually was brought to the courts. The Fifth Circuit rendered a decision stating that the school district had adequately complied with IDEA's mainstreaming requirement when it allowed him the opportunity to remain with non-disabled students during lunch and recess even though he had been removed from the pre-Kindergarten class.

The court further stated that to alter the curriculum for Daniel's abilities would modify it beyond recognition--which was not required in the name of mainstreaming. Part of the reasoning was the premise that the pre-kindergarten class offered Daniel nothing but an opportunity to associate with non-disabled children.

The two-part test which the court used to determine whether Daniel was being served in the least restrictive environment was a significant part of this case. The court reasoned: (a) "whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. If it cannot and the school intends to provide special education or to remove the child from regular education" (b) "whether the school has mainstreamed the child to the maximum extent appropriate" (p. 1048). This test became the basis for other courts in devising their own tests for determining LRE.

Greer Case

The next major case involving LRE was *(Christy) Greer v. Rome City School District* (1991). This case was from Georgia and was heard by the Eleventh Circuit. Christy was a ten year old girl also with Down's Syndrome.

When Christy was five years old, her parents attempted to enroll her in the kindergarten program at her neighborhood school. The school district insisted upon evaluating her prior to any enrollment. The parents refused, fearing that she would be placed in a special education class, and instead kept her home to work with her on kindergarten readiness.

Two years later, when she was seven, her parents again attempted to enroll her in the kindergarten program at the neighborhood school. The school district again requested permission to evaluate Christy, but in the interim allowed her to attend the kindergarten program. (The school district's willingness to now allow Christy to attend the kindergarten program may have been due to her reaching the compulsory school age.)

The school district asked for a hearing to determine the merits of being allowed to evaluate Christy after the parents refused to grant permission. The hearing officer found in favor of the school district and Christy was evaluated. As a result of the evaluation, the district recommended placing Christy in a self-contained special education class. The parents refused and the district asked for a hearing on the placement issue. The case moved to the courts and eventually was appealed to the Eleventh Circuit.

During the two years that it took for the case to be heard by the U.S. District Court for the Northern District of Georgia and then by the Eleventh Circuit Court of Appeals, Christy remained in the kindergarten program of her neighborhood school. This was due to the "stay-put" provision of IDEA (1990). According to this regulation, a student must be allowed to remain in the current placement while the placement is being actively contested.

The court found in favor of continuing Christy's kindergarten placement, stating that she had made progress during her two years in the class and was no longer unusually disruptive nor required a disproportionate amount of the teacher's attention. It was further found that the school district had erred in not considering a full range of supplemental aids and services for

Christy and had made no effort to modify the kindergarten curriculum for her. The court hastened to caution, however, that this regular education placement may not be appropriate for Christy in the future.

The reasoning used by the court in determining the LRE for Christy was an important part of this decision. This circuit used the two-part test of the *Daniel R.R. Case* to formulate its own test. The court said that the school district may: (a) "compare the educational benefits that the handicapped child will receive in a regular classroom, supplemented by appropriate aids and services, with the benefits he or she will receive in a self-contained special education environment;" (b) "consider what effect the presence of the handicapped child in a regular classroom would have on the education of other children in the classroom;" and (c) "consider the cost of the supplemental aids and services that will be necessary to achieve a satisfactory education for the handicapped child in a regular classroom", (p. 656). This test, thus became the basis for future LRE tests.

(Rafael) Oberti Case

Two years after the Greer decision, the case of *(Rafael) Oberti v. the Board of Education of the Borough of Clementon School District* (1993) was decided. This case originated in New Jersey and was heard by the Third Circuit. Rafael was an eight year old boy, also with Down's Syndrome.

When Rafael was five years of age, prior to his pending entry into kindergarten he was evaluated by his local school district. It was recommended then that he be placed in a segregated special education class located in another school district. His parents refused and the district placed him in a local regular developmental kindergarten program for the morning and in a special education class in another district in the afternoon.

Although Rafael made academic and social progress in the kindergarten class, he experienced a number of serious behavioral problems there. At the end of the school year, the school district proposed to place him for the following year in a segregated special education class in another school district. The parents refused to grant permission for the placement and requested a due process hearing. Through mediation they finally agreed to a segregated special education placement in another school district with the district promising to explore mainstreaming possibilities and eventual regular classroom placement in the local school district.

In his special education placement, Rafael made academic progress while his disruptiveness abated. The school district, however, was making no plans to mainstream him nor did he have any meaningful contact with nondisabled students. His parents requested a hearing, with the case eventually being heard by the courts.

The court found, after listening to expert witness testimony, that many of the successful special education techniques used with Rafael could be implemented in a regular classroom. The court also noted that his behavioral problems during the developmental kindergarten placement were largely the result of the district's failure to provide adequate supplementary aids and services.

In its attempt to determine the least restrictive environment for Rafael, the court looked to the *Daniel R.R.* and *Greer* decisions in creating a new test. The court reasoned that: (a) "the school must consider the whole range of supplemental aids and services, including resource rooms and itinerant instruction;" (b) "comparison between the educational benefits the child will receive in a regular classroom (with supplementary aids and services) and the benefits the child will receive in the segregated, special education classroom;" and (c) "the possible negative effect the child's inclusion may have on the education of the other children in the regular classroom" (pp. 1021-1022). Thus another test was build upon which a different district court could make modifications.

Holland Case

The next major LRE case to be heard by a district court was *Sacramento City Unified School District, Board of Education v. Rachel Holland* (1994). This case originated in California and was heard by the Ninth Circuit. Rachel was an eleven-year-old girl who tested with an IQ of 44.

Rachel had previously attended a variety of special programs in the local school district. Her parents sought to increase the time she spend in a regular classroom, finally requesting that she be placed full-time in such a setting. The district instead proposed a special education placement with regular class placement for non-academic subjects and related activities. The parents refused the placement, requested due process, and in the interim enrolled Rachel in a kindergarten program at a private school.

The court found that Rachel had benefited from her regular kindergarten class at the private school, nor was she disruptive in that setting. It was also noted that the district had overstated the cost of putting her in regular education. The court, therefore, directed the district to place Rachel full-time in a regular second grade classroom with some supplemental services.

The Ninth Circuit also used prior decisions in determining the least restrictive environment, building upon the *Daniel R.R., Greer,* and *Oberti* reasoning in constructing its own test. This court developed a four-part test which included: (a) "educational benefits available in a regular classroom, supplemented with appropriate aids and services, as compared with the educational benefits of a special education classroom;" (b) "non-academic benefits of interaction with children who were not disabled; (c) effect of Rachel's presence on the teacher

and other children in the classroom;" and (d) "cost of mainstreaming Rachel in a regular classroom" (p. 59-60).

The Holland case, however, did not end here. The school district appealed it to the U.S. Supreme Court. In its brief, the district made two major requests: (a) what was to be the role of educational professionals in evaluating appropriate placements, and (b) must the school district subject the disabled child to repeated failures in full-time mainstreaming classrooms prior to placing the child in a program with less than full-time mainstreaming. The Supreme Court, nevertheless, refused in 1994 to hear the case. Thus the questions poised by the district went unanswered.

Clyde K. v. Puyallup Case

One of the most recent LRE cases to be decided by a circuit court was Clyde *K. v. Puyallup School District* (1994). (Note that this was the same circuit which had rendered the Holland decision some seven months earlier.) Clyde K. Was the father of Ryan K., a fifteen-year-old student with Tourette's Syndrome and Attention Deficit Hyperactivity Disorder (ADHD). Ryan had been receiving special education services while enrolled in a regular classroom in the Puyallup School District in the state of Washington.

In the middle of the school year of 1992, Ryan's behavior suddenly deteriorated drastically. He frequently disrupted class by taunting other students with name-calling and profanity, insulting teachers with vulgar comments, directing sexually-explicit remarks at female students, refusing to follow directions, and kicking and hitting classroom furniture. The school district removed Ryan from the school after he assauited a school staff member. Initially Ryan's parents agreed to the school district contention that it was no longer safe for him to remain at the school and that he should be placed in an off-campus self-contained special education program on a temporary basis, but later changed their minds. Since the parents had given initial approval for the off-campus special education placement, the "stay put" provision of IDEA dictated that Ryan remain in the special education placement during the appeal process.

The court found that the off-campus special education placement was indeed the least restrictive environment for Ryan, using its own four-part test from the Holland case in making the decision. Court reasoning went as follows:

1. (Academic benefit) Ryan no longer received any academic benefits in his mainstreamed setting, as his classroom behavior prevented him from learning.
2. (Non-academic benefit) Ryan received at best only minimal non-academic benefits from his placement. He did not model his behavior on that of his non-disabled peers, was socially isolated, and suffered much stress from teasing.

3. (Negative effects on others) Ryan's presence had an overwhelming negative effect on teachers and other students.
4. (Cost) This was not an issue in this case.

This case was indeed different from the previous cases discussed. Here we had an older youth, who was not mentally retarded. The court sided with the school district in removing him from the mainstream. Here they looked closely at the effect of his presence in a mainstreamed setting, finding that school officials have a special obligation to ensure that students entrusted to their care are kept out of harm's way and that his sexual harassment could have harmful effects on young female students. The Ninth Circuit used the same LRE test from the Holland case to arrive at the opposite decision--namely against mainstreaming.

Urban Case

A final case in the discussion of the intent of Congress in determining LRE is *(Gregory) Urban v. Jefferson County School District* (1994). This case was decided by the U.S. District Court of Denver, CO. As it did not (as of yet) reach the circuit court level, it may be of less importance.

Gregory was a nineteen year old male who functioned overall at the level of a two or three year old. He was receiving his education in a neighboring city, being served in the most intensive special education program in order to obtain some educational benefit. His program included: jobsite training, adaptive physical education, and regular education classes--where he was accompanied at all times by a one-on-one teaching assistant. Although his parents basically approved of his program, they were concerned that he was not attending the high school in his own community--thus being denied the opportunity of being integrated into his own community, where he will live upon completion of high school. The parents, therefore, requested a hearing and the case eventually was heard by the district court.

Gregory's parents presented the argument that he was not being educated in the least restrictive environment, as he was not at the high school in his home community. The court disagreed, stating that this was not supported in either statutory or case law. Thus a court has now indicated that attendance at the "neighborhood school" is not a criteria of LRE.

Discussion

The courts have, indeed, further refined the concept of LRE in their attempt to determine the intent of Congress when it legislated IDEA. It appears that in the future some sort of a test will be employed to determine whether a student has indeed been placed in the least restrictive environment. Factors to be considered might include: use of supplementary aids and services,

educational and non-educational benefits, effect of the child upon others, cost, and whether student has been mainstreamed to the maximum extent possible when segregated placement is used. Perhaps the neighborhood school will no longer be considered as the "only" appropriate placement.

It also appears when the child is young and intellectually disabled the courts will favor regular class placement. On the other hand, older children--especially those with behavioral disorders will be more likely removed from the mainstream. The courts truly are continuing to define the least restrictive environment mandated by IDEA.

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