

# **SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES**

## **Chapter 7**

### **Information on Least Restrictive Environment**

From a 13-Chapter Manual

Available by Chapter and in Manual Form

Written by:

**Community Alliance for Special Education (CASE)**

**and**

**Protection and Advocacy, Inc. (PAI)**

**Copyright © 1992 by CASE and PAI**

**Ninth Edition**

**Revised December 2005**

Written permission of the Community Alliance for Special Education (CASE) and Protection and Advocacy, Inc. (PAI) must be obtained for duplication of the materials contained in *Special Education Rights and Responsibilities*.

**These materials are based on special education laws and court decisions in effect at the time of publication. Federal and state special education law can change at any time. If there is any question about the continued validity of any information in the handbook, contact CASE, PAI or a legal authority in your community.**

Federal special education law was significantly amended by Congress in 2004 and will be further clarified by regulations from the U.S. Department of Education in 2006. The California Education Code has been amended to reflect some of the federal law changes but not all. In certain circumstances where it provides greater protections or entitlements, California law will continue to control special education pupils' rights unless it is amended to completely conform to federal law.

CASE and PAI will monitor the development of conforming state law and regulations, so that revised state laws and regulations can be incorporated into later supplements and editions of SERR.

For further information on the development of federal and state law and regulation, or clarification about IDEA implementation, please contact CASE or PAI.

**COMMUNITY ALLIANCE FOR SPECIAL EDUCATION (CASE)** provides legal support, representation, technical assistance consultations, and training to parents throughout the greater San Francisco Bay Area whose children need appropriate special education services. Trained advocates and attorneys assist parents at IEP meetings, Mediation Conferences and Due Process Hearings. CASE also provides free consultations about special education rights and services to parents and professionals by telephone or face-to-face. CASE is a nonprofit organization serving all children with disabilities who need or may need special education services. For more information, contact:

## **CASE**

### **Main Office**

1550 Bryant Street, Suite 738

San Francisco, CA 94103

Tel. - (415) 431-2285

FAX - (415) 431-2289

Email: [case\\_org@yahoo.com](mailto:case_org@yahoo.com)

Website: [www.caseadvocacy.org](http://www.caseadvocacy.org)

### **Hayward Office**

680 W. Tennyson Road, Room 4

Hayward, CA 94544

Tel. - (510) 783-5333

FAX - (510) 783-8822

### **California Parenting Institute**

3650 Standish Avenue

Santa Rosa, CA 95407

Tel. - (707) 585-6108

**PROTECTION AND ADVOCACY, INC. (PAI)**, is a private, nonprofit organization that protects the legal, civil and service rights of Californians who have developmental or mental disabilities. PAI provides a variety of advocacy services, including information and referral, technical assistance, and direct representation. For information or assistance with an immediate problem, call:

## **PAI**

**Toll Free: (800) 776-5746**

9:00 AM to 5:00 PM - Monday through Friday

### **Central Office**

100 Howe Ave., Suite 185-N  
Sacramento, CA 95825  
Legal Unit - (916) 488-9950  
Administration - (916) 488-9955  
TTY – (800) 719-5798

### **San Diego Area Office**

1111 Sixth Ave., Suite 200  
San Diego CA 92101  
(619) 239-7861  
TTY – (800) 576-9269

### **Los Angeles Area Office**

3580 Wilshire Blvd., Suite 902  
Los Angeles, CA 90010  
(213) 427-8747  
TTY – (800) 781-5456

### **San Francisco Bay Area Office**

1330 Broadway, Suite 500  
Oakland, CA 94612  
(510) 267-1200  
TTY – (800) 649-0154

PAI receives funding under the Developmentally Disabled Assistance and Bill of Rights Act and the Protection and Advocacy for Mentally Ill Individuals Act. Any opinions, findings, recommendations or conclusions expressed in this publication are those of the authors and do not necessarily reflect the views of the organizations which fund PAI.

# **SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES**

## **TABLE OF CONTENTS**

- Chapter 1** Information on Basic Rights and Responsibilities
- Chapter 2** Information on Evaluations/Assessments
- Chapter 3** Information on Eligibility Criteria
- Chapter 4** Information on IEP Process
- Chapter 5** Information on Related Services
- Chapter 6** Information on Due Process Hearings/Compliance Complaints
- Chapter 7** Information on Least Restrictive Environment
- Chapter 8** Information on Discipline of Students with Disabilities
- Chapter 9** Information on Interagency Responsibility for Related Services  
(AB 3632/882)
- Chapter 10** Information on Vocational Education
- Chapter 11** Information on Preschool Education Services
- Chapter 12** Information on Early Intervention Services
- Chapter 13** Information on the Rights of Students with Serious Health  
Conditions to Appropriate Educational Services

**NOTE:** The text in each chapter refers to specific Questions in other chapters by using the titles shown above.

(Blank page)

# SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

## Chapter 7

### Information on Least Restrictive Environment

#### TABLE OF CONTENTS

<b>Question</b>	<b>Page</b>
1. What does least restrictive environment (LRE) mean?.....	1
2. What do the terms “mainstreaming”, “integration”, “full inclusion” and “reverse mainstreaming” mean?.....	1
3. What are the major legislative and judicial provisions of law underlying the least restrictive environment requirement?.....	2
4. What factors may be important in determining whether my child is being educated to the maximum extent appropriate with her nondisabled peers?.....	6
5. Does the district have to provide aids and services to assist my child’s integration? What if the district says that providing those aids and services is too expensive?.....	7
6. The district told me that my child may not be integrated because he cannot benefit academically from regular class instruction. Is this true?.....	9
7. Must the determination of whether my child would be too disruptive in the classroom be made in light of the possibility of supplementary aids and services to address my child’s behavior?.....	10
8. What sorts of things may I ask for in the way of supplementary aids and services to assist my child in the regular classroom? .....	11

9. If my child is not placed in a regular classroom, does the district have any least restrictive environment obligations with regard to my child's education? .....	12
10. Are there any factors that the district may not consider in determining what the least restrictive educational environment for my child would be?.....	13
11. If my child cannot benefit from the regular academic program, can he participate in other school programs?.....	13
12. When I develop my child's IEP, how can I include services and placement in the least restrictive environment? How can the IEP team write this specifically?.....	13
13. What can be done in the IEP document to better ensure both an inclusive regular class placement and an appropriate program for my child? .....	17
14. How can I extend integration outside the school grounds and into the community? .....	18
15. What if the only educational placement my school district has available for my child is a special center for students with disabilities operated by the county?.....	19
16. What must school districts do to ensure that programs in the least restrictive environment are available to meet the needs of all students? .....	20
17. Can the nature or severity of my child's disability be used to justify a segregated educational setting? .....	22
18. Does "least restrictive environment" apply to students in public institutions, residential or nonpublic school placements?.....	22
19. Does regular education staff have to cooperate in providing my child with integration, full inclusion and mainstreaming opportunities?.....	23
20. Can the lack of a willing regular education teacher prevent my child from being educated in a regular classroom? .....	24
21. If I think my child's right to an education in the least restrictive environment is being denied, what can I do? .....	25

22. Can a hearing officer order a school district to start a new classroom to ensure placement in the least restrictive environment?.....25
23. How can I ensure that my district or county is moving toward an effective model of integrated services for all students with disabilities?.....25
24. What if my school district tells me that my child can only get related services if she attends school on a segregated site? .....26
25. I think my child could be in regular classes at least part of the day if she could be in the resource class the rest of the day. The school district says that the maximum time my child can be in a resource class is 50 percent of the school day. Is that true?.....27
26. The school district says it will lose money if it places my child in a regular class more than half of the school day instead of in a special class. Is that true? .....27
27. What can I do to help make sure the supplementary aids and services my child needs in order to be appropriately served in regular education classrooms or other environments are provided? .....28
28. Must I write a letter requesting allocation of funds for supplementary aids and services in order to be entitled to them?.....29
29. I was not aware of the SELPA budget plan development process or the time lines. Will it do any good to request an allocation for supplementary aids and services for my child after the SELPA budget plan has been approved and the budget year has begun?.....29
30. My child is preschool age. Do the least restrictive environment requirements apply to my child? What if my district does not offer any preschool for children without disabilities; how will my child be able to integrate with any nondisabled children? .....30
31. Do the 1997 amendments to the federal law have any impact on the school district's duty to educate my child in the least restrictive environment? .....30
32. I would like to have my child placed in a regular class, but the school said my child has to prove himself capable of handling the subjects and activities of the regular class before it will consider placing him there, is this correct? ..32

33. My child is transitioning out of school and special education and into more adult programming opportunities, do the requirements for programming to the maximum extent appropriate with nondisabled peers apply to transitioning students as well?.....32

34. My child is integrated into the regular classroom during the regular academic year. Should that integrated programming be available during the extended school year?.....33

35. During the IEP meeting, the district told me that the function of the IEP team was to determine what my child’s present educational levels are and what his goals and services should be, but that it was then up to the district to determine the placement that would be best to implement the IEP. Is that correct?.....33

Appendix I Indicators of Fully Inclusive Programs for Students with Disabilities.....1

# SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

## Chapter 7

### Information on Least Restrictive Environment

#### 1. What does least restrictive environment (LRE) mean?

Least Restrictive Environment (LRE) is the requirement in federal law that children with disabilities receive their education, to the maximum extent appropriate, with nondisabled peers and that special education pupils are not removed from regular classes unless, even with supplemental aids and services, education in regular classes cannot be achieved satisfactorily. [20 United States Code (U.S.C.) Sec. 1412(a)(5)(A).]

#### 2. What do the terms “mainstreaming”, “integration”, “full inclusion” and “reverse mainstreaming” mean?

**Mainstreaming** refers to placement of a student with disabilities into ongoing activities of regular classrooms so that the student receives education with nondisabled peers — even if special education staff must provide supplementary resource services.

**Integration** includes mainstreaming into regular classes and access to, inclusion, and participation in the activities of the total school environment. Integration combines placement in public schools with ongoing structured and non-structured opportunities to interact with nondisabled, age-appropriate peers. A student with severe disabilities should be able to participate in many general school activities — such as lunch, assemblies, clubs, dances or recess. The student should also be able to participate in selected activities in regular classes — such as art, music, or computers. The student should also be able to participate in regular academic subjects in regular classes if appropriate curriculum modifications are made and adequate support is provided. The student should be able to use the same facilities as nondisabled students — including hallways, rest rooms, libraries, cafeterias and gymnasiums.

“Integration” can refer to integration of a special education student into a regular education classroom in the same sense as in “mainstreaming.” However, “integration” also refers to placement of a student in special education classes located on integrated campuses (that is, campuses that have both special and regular education classes). An “integrated” placement includes systematic efforts to maximize interaction between the student with disabilities and nondisabled peers.

**Full inclusion** refers to the total integration of a student with disabilities into the regular education program — with special support. In full inclusion the student’s primary placement is in the regular education class. The student has no additional assignment to any special class for children with disabilities. Thus, the student with disabilities is actually a member of the regular education class. The student is not being integrated or mainstreamed into the regular education class from a special day class. The student need not be in the class 100% of the time, but can leave the class to receive supplementary services such as speech or physical therapy. For a proposed list of characteristics of a “Full Inclusion” approach to integrated special education programming, see Appendix I.

**Reverse mainstreaming** refers to the practice of giving a student who is placed at a segregated school site, in a segregated classroom, or who resides in and attends school at a state hospital opportunities to interact with nondisabled children. It brings nondisabled children to a segregated site or to state hospital classrooms for periods of time to work with or tutor children with disabilities. School districts should not attempt to fulfill the LRE mandate by using reverse mainstreaming exclusively. They should make systematic efforts to get special education students out of special classrooms and into the school’s integrated environments. Reverse mainstreaming alone is an artificial means of integration. The IEP team should consider placements that encourage more natural interaction with nondisabled peers.

Special and regular educators must make innovative and systematic efforts to promote positive interactions between students with disabilities (both severely disabled and learning disabled) and their nondisabled peers.

### **3. What are the major legislative and judicial provisions of law underlying the least restrictive environment requirement?**

Federal law provides that each local education agency must ensure that:

...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. [34 Code of Federal Regulations (C.F.R.) Sec. 300.550(b)(1) and (2); 20 U.S.C. Sec. 1412(a)(5)(A); California Education Code (Cal. Ed. Code) Sec. 56364.]

In addition to the requirement quoted above, Congress has recognized that a state's method of funding special education services can sometimes encourage school districts to place children in specialized settings because of the potential to receive more money. Because of this danger, Congress now requires states to develop policies and procedures to assure that their funding systems, if based on type of setting, do not violate the requirements of education in the least restrictive environment. [20 U.S.C. Sec. 1412(a)(5)(B).]

In its 1997 amendments to the federal special education laws, Congress has specifically recognized the importance and benefits of education of special education students in regular classes and environments. See 20 U.S.C. Sec. 1400(c)(5)(A) and (D). Beginning in July 1998, Congress required that IEPs include a statement describing how the child's disability affects his involvement and progress in the general curriculum and a statement of annual goals, including benchmarks or short-term objectives that are related to enabling the child to be involved and progress in the general curriculum. [20 U.S.C. Sec. 1414(d)(1)(A)(i) and (ii); 34 C.F.R. Sec. 300.347(a)(2).] The statement of services in the IEP must also include statements of:

- (1) The supplemental aids and services to be provided for the child; and
- (2) The program modifications and supports for school personnel to be provided for him to be involved, progress in the general curriculum, and participate in extracurricular and nonacademic activities. [20 U.S.C. Sec. 1414(d)(1)(A)(iii); 34 C.F.R. Sec. 300.347(a)(3).]

The U.S. Department of Education (USDOE) issued new regulations in March 1999 that further clarify the responsibility of schools to educate children with disabilities in the least restrictive environment. The USDOE also published its discussion and rationale for making certain changes to regulations governing the least restrictive environment, among other topics. For example, the USDOE stated:

Placement in the LRE requires an individual decision, based on each child's IEP, and based on the **strong presumption** of the IDEA that children with disabilities be educated in regular classes with appropriate aids and supports...The regulations have always required that placement decisions be based on the individual needs of each child with a disability and prohibited categorical decision-making. [64 Fed. Reg. 12637 (3/12/99) (emphasis added).]

While the Act and regulations recognize that IEP teams must make individualized decisions about the special education and related services, and supplementary aids and services, provided to each child with a disability, they are driven by IDEA's **strong preference** that, to the maximum extent appropriate, children with disabilities be educated in regular classes with their nondisabled peers with appropriate supplementary aids and services. [34 C.F.R. Part 300, Appendix A. I; 64 Fed. Reg. 12470 (3/12/99) (emphasis added).]

Even though IDEA does not mandate regular class placement for every disabled student, IDEA presumes that the first placement option considered for each disabled student by the student's placement team, which must include the parent, is the school the child would attend if not disabled, with appropriate aids and services to facilitate such placement. Thus, before a disabled child can be placed outside of the regular educational environment, the **full range** of supplementary aids and services that if provided would facilitate the student's placement in the regular classroom setting **must** be considered. [34 C.F.R. Part 300, Appendix A, Q. 1; 64 Fed. Reg. 12471 (3/12/99) (emphasis added).]

State law provides that:

Individuals with exceptional needs [shall be] offered special assistance programs that promote maximum interaction with the general school population in a manner which is appropriate to the needs of both. [Cal. Ed. Code Sec. 56001(g).]

Special classes that serve pupils with similar and more intensive educational needs shall be available. The special classes may enroll the pupils only when the nature or severity of the disability of the individual with exceptional needs is such that education in the

regular classes with the use of supplementary aids and services, including curriculum modification and behavioral support, cannot be achieved satisfactorily. These requirements also apply to separate schooling, or other removal of individuals with exceptional needs from the regular education environment.

In providing or arranging for the provision of activities, each public agency shall ensure that each individual with exceptional needs participates in those activities with nondisabled pupils to the maximum extent appropriate to the needs of the individual with exceptional needs, including nonacademic and extracurricular services and activities... [Cal. Ed. Code. Sec. 56364(a)(b).]

For students not yet receiving special education, but for whom special education eligibility is being considered, state law provides that:

A pupil shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. [Cal. Ed. Code Sec. 56303.]

The LRE regulations of federal law, Title 34, Code of Federal Regulations, Section 300.552(c) and (d) provide:

Unless the IEP [individualized education program] of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if non disabled; [and] [i]n selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.

Numerous federal courts have issued decisions on the issue of special education in the least restrictive environment. For the most part, these courts have encouraged integrated education and have established a solid trend in this direction.

There is “a presumption that, among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferable to placement in a special public school class.” [*P.A.R.C. v. Pennsylvania.*]

The court adopted “a presumption that among the alternative programs of education, placement in a regular public school class with appropriate ancillary services is preferable to placement in a special school class.” [*Mills v. Board of Education.*]

The U.S. Supreme Court has stated: “The Act requires participating states to educate handicapped children with nonhandicapped children whenever possible.” [*Board of Education v. Rowley.*]

In California, the federal appeals court has stated that the: “Congressional preference for educating handicapped children in classrooms with their peers is made unmistakably clear.” [*Dept. of Educ., State of Hawaii v. Katherine D.*]

Denying access to a regular public school classroom without a compelling education justification constitutes discrimination. [*Tokarcik v. Forest Hills School District.*]

Federal special education law “requires school systems to supplement and realign their resources to move beyond those systems, structures and practices which tend to result in unnecessary segregation of children with disabilities.” [*Oberti v. Board of Education.*]

The courts, including the federal courts in California, have established that the burden is on the school district to prove that a student cannot be educated successfully in the regular classroom.

“[T]he District has not justified, to the satisfaction of this reviewing court, its decision to exclude [the student] from a regular classroom.” [*Mavis v. Sobol.*]

“[T]he Act’s strong presumption in favor of mainstreaming...would be turned on its head if parents had to prove that their child was worthy of being included, rather than the school district having to justify a decision to exclude the child from the regular classroom. [*Oberti v. Board of Education.*]

“The statutory presumption in favor of mainstreaming has been construed as imposing a burden on the school district to prove that a child cannot be mainstreamed. [*Sacramento City Unified School District v. Holland.*]

#### **4. What factors may be important in determining whether my child is being educated to the maximum extent appropriate with her nondisabled peers?**

In the case of *Sacramento City Unified School District v. Holland*, the court identified several factors which are critical in analyzing whether a school district is complying with the least restrictive environment mandate. These factors are:

- (1) Educational benefits available to the student with a disability in a regular classroom, supplemented with appropriate aids and services, as compared with educational benefits of a special education classroom;
- (2) Nonacademic benefits of interaction with children who are not disabled;
- (3) Effect on the teacher and the other children in the classroom of the presence of the student with disabilities in terms of disruptive behavior and/or undue consumption of the teacher's time;
- (4) Cost of mainstreaming a student with disabilities in a regular education classroom as compared to the cost of placement of the student in a special education classroom.

No single factor is determinative. Even if a child might make more progress on academic IEP goals in a special class, the IEP team should still consider the second factor regarding nonacademic benefit before determining placement. As long as the progress made is satisfactory, the educational benefit factor of *Holland* is met, even if the progress is not the most that the child could make in another setting.

However, it is clear from court decisions subsequent to *Holland* that if a child would not benefit from placement in a regular class or environment, that is, the child would not progress toward meeting her IEP goals, placement in a regular classroom or environment is unlikely. [*Hartmann by Hartmann v. Loudoun County Bd. Of Educ.* (4<sup>th</sup> Cir. 1997); *Poolaw v. Bishop* (9<sup>th</sup> Cir. 199<sup>th</sup>); *County of San Diego v. California Special Education Hearing Office* (9<sup>th</sup> Cir. 1996).] Some educational benefit must occur. However, in California, the benefit that must occur in order for an IEP and placement to be appropriate is not substantial. The Court in *Holland* stated: "The [IDEA's] presumption in favor of mainstreaming requires that a handicapped child be educated in a regular classroom if the child can receive a satisfactory education there, even if it is not the best academic setting for the child." Moreover, the determination of whether a child will make progress toward IEP goals must be made in the context of whether the child will make progress if supplementary aids and services are offered to support the child in the regular environment. [20 U.S.C. Sec. 1415(a)(5)(A); 34 C.F.R. Sec. 300.550.]

## **5. Does the district have to provide aids and services to assist my child's integration? What if the district says that providing those aids and services is too expensive?**

The district must provide supplementary aids and services to accommodate the special educational needs of students with disabilities in integrated environments.

The court in *Oberti v. Bd. Of Educ.* stated that a district must take meaningful steps to include children with disabilities in regular classrooms with supplementary aids and services.

In another appellate court opinion, *Daniel R. v. El Paso Independent School District*, the court said:

The [law] does not permit states to make mere token gestures to accommodate handicapped students; its requirement for modifying and supplementing regular education is broad.

Another federal appellate court opinion, *Roncker v. Walter*, contained the following statements on the LRE issue:

In a case where [a] segregated facility is considered [academically] superior, the court should determine whether the services which make the placement superior could be feasibly provided in a non-segregated setting. If they can, the placement in the segregated school would be inappropriate under the [law].

The *Roncker* court also noted that:

Cost is a proper factor to consider since excessive spending on one handicapped child deprives other handicapped children. Cost is no defense, however, if the school district has failed to use its funds to provide a proper continuum of alternative placements for handicapped children. The provision of such alternative placements benefits all handicapped children.

While the court in *Holland* decided that cost was a consideration in determining the appropriate placement for a child, it found that providing a part-time instructional aide and making academic curriculum modifications would not cost more than a special education placement.

Even though a school district may say it does not have the money to pay for supplementary aids and services in regular environments, what may actually be happening is that the district does not have a convenient method under the special education funding system to pay for the supplementary aids and services. In any case, insufficient funds to pay for a needed service is not a legally sufficient justification for refusing to provide them, except, perhaps, when the costs would significantly impact the education of other children in the district.

**6. The district told me that my child may not be integrated because he cannot benefit academically from regular class instruction. Is this true?**

No. The court in *Holland* noted that mainstreaming requires educating a student with disabilities in a regular classroom if the child can receive a satisfactory education there, even if it is not the best academic setting for the child. The court looked at whether the student's IEP goals and objectives could be met in the classroom with some curriculum modification, or by providing supplementary aids and services. The school district in *Holland* contended that a child should be found inappropriate for regular class placement if such placement would require significant modification of the regular curriculum for the child. The Court rejected this contention and found that special education pupils may require and be entitled to substantial curriculum modifications in order to facilitate their benefit from regular class placement. The Court stated that "modification of the curriculum for a handicapped child, even dramatic modification, has no significance in and of itself. The IDEA, in its provision for the IEP process, contemplates that the academic curriculum may be modified to accommodate the individual needs of handicapped children."

Another federal appellate court opinion, *Oberti v. Board of Education of the Borough of Clementon School District*, contained the following comments on academic benefit:

[IDEA] does **not** require states to offer **the same** educational experience to a child with disabilities as is generally provided for nondisabled children... To the contrary, states must address the unique needs of a disabled child, recognizing that child may benefit differently from education in the regular classroom than other students... In short, the fact that a child with disabilities will learn differently from his or her education within a regular classroom does not justify exclusion from that environment.

The USDOE has also clarified this point in its 1999 special education regulations.

Because, as commentators noted, one consequence of heightened accountability expectations may be unwarranted decisions to remove children with disabilities from regular classrooms so as to avoid accountability for their education performance, the regulation should make clear that the type or extent of the modifications that the child needs to the general curriculum not be used to

inappropriately justify the child's removal from education in regular, age-appropriate classrooms. Therefore, a provision [is] added to Sec. 300.552 to provide that a child not be denied education in age-appropriate regular classrooms solely because the child's education required modification to the general curriculum. Under this provision, for example, a child with significant cognitive disabilities could not be removed from education in age-appropriate regular classrooms merely, because of the modifications he or she needs to the general curriculum.[64 Fed. Reg. 12637 (3/12/99); see also 34 C.F.R. Sec. 300.552(e).]

**7. Must the determination of whether my child would be too disruptive in the classroom be made in light of the possibility of supplementary aids and services to address my child's behavior?**

Yes. Before making the determination that a special education student would be so disruptive as to significantly impair the education of the other students, the district must ensure that consideration has been given to the full range of supplementary aids and services that could be provided to the student in the regular education environment to accommodate the unique needs of the special education student. [*Questions and Answers on the Least Restrictive Environment Requirements of the IDEA*, U.S. Department of Education, Office Of Special Education and Rehabilitative Services, OSEP-95-9, 11/23/94, Q and A 9.] The Court in *Sacramento City Unified School District v. Holland* stated that "when evaluating the burden that would be created by placing a handicapped child in a regular education class, the school district must consider all reasonable means to minimize the demands on the teacher: A handicapped child who merely requires more teacher attention than most other children is not likely to be so disruptive as to significantly impair the education of other children. In weighing this factor, the school district must keep in mind its obligation to consider supplemental aids and services that could accommodate a handicapped child's need for additional attention...This factor weighs against placing a handicapped child in regular education only if, after taking all reasonable steps to reduce the burden to the teacher, the other children in the class will still be deprived of their share of the teacher's attention." [*Sacramento City Unified School District v. Holland*.]

Federal law now requires that an IEP team consider behavior intervention strategies for any child with a disability whose behavior impedes his or her learning or that of others. [20 U.S.C. Sec. 1414(3)(3)(B)(i); 34 C.F.R. Sec. 300.346(a)(2)(i).]

The determination of appropriate placement for a child whose behavior is interfering with the education of others requires **careful consideration** of whether the child can appropriately function in the regular classroom if provided appropriate behavioral supports, strategies and interventions. If the child can appropriately function in the regular classroom with appropriate behavioral supports, strategies or interventions, placement in a more restrictive environment would be inconsistent with the least restrictive environment provisions of the IDEA. [64 Fed. Reg. 12637 (3/12/99) (emphasis added).]

In response to contentions about negative effects of special education students on regular education students in regular classes, it should be noted that federally funded research projects indicate that:

- (1) Achievement test performance among students who were classmates of students with significant disabilities were equivalent or better than a comparison group (Salisbury, 1993);
- (2) Students developed more positive attitudes toward peers with disabilities (Cal. Research Institute, 1992); and
- (3) Self-concept, social skills, and problem solving skills improved for all students in inclusive settings (Peck, Donaldson, & Pezzoli, 1990; Salisbury & Palombaro, 1993.). [Idem]

## **8. What sorts of things may I ask for in the way of supplementary aids and services to assist my child in the regular classroom?**

The federal law defines supplementary aids and services very broadly as: “aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate...” [20 U.S.C. Sec. 1401(29); 34 C.F.R. Sec. 300.28.] There is no all-inclusive list of the supplemental aids and services that might be used to assist special education students in regular classes. However, USDOE in a recent advisory on LRE issues has stated that the IEP team should consider a range of supplementary aids and services in light of the student’s abilities and needs. The determination of what supplementary aids and

services are needs must be made on an individual basis. Some aids and services which have been successfully used include, but are not limited to, modifications to the regular class curriculum, assistance of an itinerant special education teacher, special education training for the regular teacher, use of computer-assisted devices, provision of note takers, and the use of a resource room. Any supplemental aids and services used must be described in the student's IEP. [*Questions and Answers on the Least Restrictive Environment Requirements of the IDEA*, U.S. Department of Education, Office Of Special Education and Rehabilitative Services, OSEP-95-9, 11/23/94, Questions 3 and 4.]

One federal appellate court described the provision regarding supplemental aids and services as follows: “[The federal special education] Act does not permit states to make mere token gestures to accommodate handicapped students; its requirement for modifying and supplementing regular education is broad.” [*Daniel R. v. El Paso Independent School District*.]

**9. If my child is not placed in a regular classroom, does the district have any least restrictive environment obligations with regard to my child's education?**

Even though a student may not be placed in a regular class, the district must still take steps to maximize opportunities for the student to interact with nondisabled peers to the extent appropriate to the needs of the special education student. When the district proposes a placement other than a regular classroom, it must provide written notice to the parents explaining the placement options that were considered and the reasons for rejecting those options. [34 C.F.R. Sec.300.503 – 300.504; *Questions and Answers on the Least Restrictive Environment Requirements of the IDEA*, U.S. Department of Education, Office Of Special Education and Rehabilitative Services, OSEP-95-9, 11/23/94, Q and A 7.] The IEP team must document its rationale for placement in a setting other than the pupil's school and classroom, which he would otherwise attend if he did not have a disability. The documentation shall further indicate why the pupil's disability prevents his needs from being met in a less restrictive environment even with the use of supplementary aids and services. [5 California Code of Regulations (C.C.R.) Sec. 3042(b).]

**10. Are there any factors that the district may not consider in determining what the least restrictive educational environment for my child would be?**

The district may not make placement decisions based **solely** on factors such as the following: category of disability; severity of disability; configuration of delivery systems; availability of educational or related services; availability of space; or administrative convenience. [*Questions and Answers on the Least Restrictive Environment Requirements of the IDEA*, U.S. Department of Education, Office Of Special Education and Rehabilitative Services, OSEP-95-9, 11/23/94, Q and A 8.] See also 34 C.F.R. Part 300, Appendix A, Q. 1, 64 Fed. Reg. 12471 (3/12/99).

**11. If my child cannot benefit from the regular academic program, can he participate in other school programs?**

Yes. The law is clear that students with disabilities have the right to participate in nonacademic and extracurricular services and activities to the maximum extent appropriate to their needs. Further, school districts must provide these activities in a way that gives students with disabilities an equal opportunity to participate. Such services and activities include lunch, recess, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs, and employment opportunities. [34 C.F.R. Secs. 300.306 and 300.553.] Every IEP requires a statement of the special education and related services that will be provided for the child to be involved and participate in extracurricular and other nonacademic activities. [20 U.S.C. Sec. 1414(d)(A)(iii); 34 C.F.R. Sec. 300.347(a)(3).]

**12. When I develop my child's IEP, how can I include services and placement in the least restrictive environment? How can the IEP team write this specifically?**

As mentioned in Question 4, academics are not the only measure of educational benefit, in light of the *Holland* case. A student with disabilities will have a stronger case for an integrated environment or full inclusion regular classroom placement if her IEP includes goals and benchmarks/objectives that relate, at least in part, to the curriculum in use in the desired placement.

Negotiating goals that are related to the general education curriculum is no longer difficult because, as of 1997, federal law requires that special education pupils have

access to and benefit from the general education curriculum. Special education pupils are now entitled to these kinds of goals. The statement of a child's present levels of educational performance in the IEP must contain a statement of how the child's disability affects his involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children). [34 C.F.R. Sec. 300.347(a)(2).] The statement of goals and benchmarks/objectives in the IEP must relate to meeting the child's needs that result from the child's disability to enable the child to be involved and progress in the general curriculum. [34 C.F.R. Sec. 300.347(a)(2).] The special education and related services and supplementary aids and services listed in the IEP must be provided to enable the child to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities. [34 C.F.R. Sec. 300.347(a)(3).] The IEP must also contain a statement of any individual modifications in the administration of state or district-wide assessments of student achievement that are needed in order for the child to participate in the assessments. [34 C.F.R. Sec. 300.347(a)(5).] In other words, all the major components of the IEP are directed at including special education students in the general curriculum, activities, and achievement testing of the school. Therefore, goals and objectives must be written which are based on this curriculum and those activities. Goals and benchmarks/objectives of this type will most often necessitate placement in a general education environment.

Goals and benchmarks/objectives that are based on the general curriculum need not call for mastery of the subject matter or even for completion of every task or activity. An appropriately accommodating goal and benchmark/objective for a student with disabilities might call for learning only a portion or the first few steps of a skill that nondisabled students might go on to complete. The important factor in analyzing the appropriateness of that placement for the student with disabilities may be the fact that she is participating to some degree in the activities of the surrounding classroom. Benchmarks/objectives that require integrated activities are another means of ensuring integration. Such a goal might read: "Sandra will participate in a team sport with nondisabled peers three times per week for 45 minutes per activity." Including such goals assures your child of regular contact with nondisabled children.

*Holland* also stressed the importance of nonacademic benefits derived from a regular education classroom placement for students with disabilities. Because of the importance the court in *Holland* gave to nonacademic benefits, the IEP should also include information and goals and benchmarks/objectives related to the nonacademic benefits of an integrated placement. Such benefits for a student with a

disability may include language and behavioral models; improved self-esteem and increased motivation for learning; or improved social skills.

If possible, you should meet with your child's teacher before the IEP meeting or annual review. Many teachers regularly plan such meetings with their students' parents or guardians. At the meeting, you and the teacher will identify your priorities for benchmarks/objectives, discuss options for integration and/or mainstreaming, and reach a consensus regarding educational priorities. This may help you state your priorities at the IEP meeting itself, and is a positive way of developing goals and benchmarks/objectives.

Federal law now requires that regular education teacher attend every IEP meeting for any child who is **or may be** participating in the regular education environment. [34 C.F.R. Sec. 300.344(a)(2).] You should meet with this teacher as well as any special education teacher your child might have to give you ideas and information on what goals and benchmarks/objectives you might request at the IEP meeting. In addition, you should ask her for information about any special or related services, such as supplementary services, behavioral services, and staff support your child may need. This meeting is also an opportunity to suggest to the teachers that they begin to consider what modifications or supports they will need and they should ask for at the IEP meeting to appropriately educate your child. Teachers are entitled to modifications and supports to educate special education pupils in their classes. [34 C.F.R. Sec. 300.347(a)(3).]

State law specifically requires that "[the IEP team] shall document its rationale for placement in other than the pupil's school and classroom in which the pupil would otherwise attend if the pupil were not handicapped. The documentation shall indicate why the pupil's handicap prevents his or her needs from being met in a less restrictive environment even with the use of supplementary aids and services." [5 C.C.R. Sec. 3042(b).]

**Federal law requires that the IEP include a statement of the extent to which the student will not participate with nondisabled children in the regular class and in extracurricular and nonacademic activities. [20 U.S.C. Sec. 1414(d)(1)(A)(iv).] State law specifically requires that the IEP include the extent to which the child will be able to participate in regular education programs. [Cal. Ed. Code Sec. 56345(a)(4); 34 C.F.R. Sec. 300.347(a)(4).]** You can document this in the IEP in a number of ways. Some school districts indicate the percentage of time in regular education classes (for example, participation in regular education 30% of the school day). It is preferable, however, to list specific classes (such as regular education, art, music, and computers) or specific activities (such as

assembly, lunch, recess, and circle time with nondisabled peers). In addition, it may be appropriate for your child to participate in a special friend or buddy system. A special friend or buddy is a nondisabled peer, who meets with your child in or outside the classroom for certain activities. The goal of the special friend or buddy system is to foster interaction and friendship. You should also document this type of system in your child's IEP.

In terms of **integration**, you may wish to include contact with regular education peers as part of specific objectives. This would be a component of the conditions or setting described in the objective. For example:

- (1) John will use the sign for "hello" to greet nondisabled peers at lunch and on the playground each day;
- (2) Denise will engage in structured games with a nondisabled peer tutor from another class three times per week during leisure periods after lunch; or
- (3) Anne-Marie will begin a self-feeding program by scooping her food at lunch, in the presence of a nondisabled "peer buddy."

Integration can and should be built into objectives across areas of **skill** (communication, mobility, social) and **domain** (vocational, leisure, domestic, community). As noted above, contact with nondisabled and less severely disabled students in school may occur during periods such as community skill instruction, food preparation and lunch periods, vocational skill training, etc. See Question 9 below.

In terms of **mainstreaming or full inclusion**, students who can participate in regular programming or regular classes may require modifications, supplementary aids or services within that regular class in order to learn. Such modifications may include the use of a tape recorder, oral testing, curriculum adaptations, special seating, an instructional aide, etc. Any modifications or services **must** be specifically written into your child's IEP. [34 C.F.R. Sec. 300.347(a)(3).]

The IEP document should **specifically describe placement** in the LRE. This can be written in the placement section, in the notes section or in an addendum attached to the IEP. Some examples of placement statements are:

- (1) Placement in a special day class (SDC) on an age-appropriate regular school site with daily opportunities for integration and mainstreaming;
- (2) Placement in fully mainstreamed model kindergarten program that is team taught by special and regular education teachers;

- (3) Placement in a resource specialist program (RSP) for 30% of the school day. Mainstreamed for social studies, math, computers and all nonacademic classes with front row seating and oral testing in all classes;
- (4) Placement at Rose Elementary School SDC with mainstreaming aide for music, art, homeroom and lunch;
- (5) Placement in SDC at a regular senior high school site with integrated and community-based programming as set out in the IEP; or
- (6) Full inclusion placement in a regular education first grade classroom with a full-time instructional aide.

See also Question 13 below.

### **13. What can be done in the IEP document to better ensure both an inclusive regular class placement and an appropriate program for my child?**

A well-written and effective IEP for a child who is fully included is one that incorporates three basic principles. First, IEP goals and benchmarks/objectives must address the educational deficits of the child, and these must be the deficits, identified in the present levels of educational performance section of the IEP, which inhibit the child from being involved and progressing in the general education curriculum. Second, if necessary, the educational activities and curriculum used to achieve those goals and benchmarks/objectives must be modified so that they are accessible to the child. Third, if educational activities and curriculum are modified to be accessible to the child and to address the child's goals and benchmarks/objectives, the activities and curriculum must remain related to and based on the activities and curriculum of the general education classroom at all times. In short, a child's IEP should be integrated into the instruction, activities and schedule of the classroom in which the child is placed. This is not only what the law requires, but it is necessary for the child to be an included member of the class and not isolated by his materials or activities.

For example, a child with a disability may not be skilled at writing activities and, therefore, has IEP goals and benchmarks/objectives to address this deficit. If the rest of the class is keeping a daily journal as part of their learning activities, a child with a disability could participate in this activity by words being dotted in by a teacher or peer for the child to trace over, or he could use cut-out letters to sequence for a single-word or short title or statement coupled with an illustration or a cut-out picture. Longer narratives could be dictated for another person to write down or a

tape-recorder might be used. A computer keyboard could also assist with identifying and sequencing letters. In this way, IEP goals for written and spoken language and fine motor skills could be addressed in the same activity.

For math, for example, manipulatives could be used for counting and adding activities rather than numbers on paper. Counting could also be emphasized in other non-math activities, such as counting out materials to be passed out to each student for an art activity or in counting the students in the class for daily attendance. Math lessons could be limited to less problems of the same difficulty or all the problems of a lesser difficulty. It is important that children with disabilities use the same or very similar materials as those used by the rest of the class so as to feel like a full member of the class. For math, for example, the rest of the class may be completing a sheet of 20 long division problems. A math goal of the special education pupil in that class may be to count to 20. The student would be given the same sheet at the same time as the rest of the class is working on it but be asked to count the number of division problems on the page rather than solve them.

This kind of programming requires skill, creativity and knowledge of both curriculum and students with disabilities. A regular or special education teacher on his or her own may not have the skills necessary to incorporate a special education IEP into a regular education classroom. It may require the use of an inclusion specialist and the collaboration of regular and special education personnel. If the school district advises against an inclusive or more integrated placement on the grounds that the school staff lack these skills, ask that a full inclusion specialist, who is skilled in general education curriculum adaptation and IEP incorporation, be assigned to your child and his teacher, perhaps from somewhere else in the school district or Special Education Local Plan Area.

#### **14. How can I extend integration outside the school grounds and into the community?**

An important aspect of education for a student with severe disabilities is how to function appropriately in the community. IEP goals should address integration of students with disabilities in the real world environments they will have to use as adults. These include recreation, community, and vocational environments. Skills that will facilitate your child's acceptance (such as social or communication skills) should be incorporated into the educational objectives. If this type of programming begins during the school years, successful integration as an adult is much easier to achieve.

In order to accomplish the above, parents and teachers need to first inventory possible activities in which the student could participate in the local community. Some suggestions are:

Boy/Girl Scouts, Boys/Girls clubs, local weight lifting gym, local Jazzercise classes, local parks, playgrounds, parks and recreation programs, local library, movie theaters, fast food restaurants, shopping centers.

From these ideas, parents and teachers can identify the skills a student needs to learn to participate in the community activity and build these into the IEP goals and objectives. For example:

- (1) Rebecca will learn to shop for groceries from a picture list, select items from the shelves, give money and receive change as measured by teacher observation three times per week;
- (2) Given a community work site at Pizza Hut, Kevin will clear and wipe tables and sweep floors up to competitive standards as measured by teacher and employer observation, for one hour two times per week;
- (3) When at a fast food restaurant, Ryan will order food and appropriately thank server 80% of the time as measured by teacher observation.

Peer tutors or buddies who attend the student's school can also help promote integration in the community. They may be encouraged to:

- (1) Visit the student with disabilities' home;
- (2) Invite the student with disabilities to visit their home; or
- (3) Participate in one of the above activities or organizations with the student with disabilities.

### **15. What if the only educational placement my school district has available for my child is a special center for students with disabilities operated by the county?**

School districts must provide students with disabilities with maximum opportunities to interact with nondisabled peers. The law requires school districts to provide a **full continuum of alternative placements** to ensure that students receive services in the LRE. The full continuum of alternative placements must include the following:

- (1) Regular class placement;
- (2) Regular class with resource or itinerant instructional services;

- (3) Regular class with special education related services;
- (4) Special classes or special schools (either of which often also involve the provision of related services);
- (5) Nonpublic schools;
- (6) State schools for students with low incidence disabilities; and
- (7) Instruction in settings other than classrooms (such as in homes or hospitals).

[34 C.F.R. Sec. 300.551; Education Code Sec. 56361.]

The school district must provide students with maximum appropriate opportunities to interact with nondisabled peers, which includes providing placements on regular school sites.

Federal and state policy specifically forbid selecting a placement in a segregated setting over placement on a regular school site if the placement decision is based on administrative factors and not on the student's needs. A school cannot use lack of appropriate placements as an excuse for denying students with disabilities their right to an education in the least restrictive environment. Although a school district can contract with the county to provide programs for students, the district cannot use this arrangement as an excuse to deny a student an education in the LRE. [Federal Policy Letter on LRE, Education for the Handicapped Law Reporter (EHLR) page 211:384, March 21, 1986; CDE, Office of Special Education, Policy Statement on LRE.]

Recent federal policy states:

In all cases, placement decisions must be individually determined on the basis of each child's abilities and needs, and not solely on factors such as category of disability, significance of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience. [34 C.F.R. Part 300, Appendix A, Q. 1; 64 Fed. Reg. 12471 (3/12/99).]

## **16. What must school districts do to ensure that programs in the least restrictive environment are available to meet the needs of all students?**

IDEA now specifically allows federal special education funds provided to school districts to be used "for the costs of special education and related services and

supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from such services.” [20 U.S.C. Sec. 1413(a)(4); 34 C.F.R. Sec. 300.235(a)(1).] This means that a school cannot refuse to provide an instructional or behavioral aide or piece of equipment on the grounds that the aide or device may also benefit or be utilized by pupils who are not in special education and that special education funds are only supposed to be used for special education pupils.

In addition, the CDE has said:

To ensure that a full continuum of program options are available, all education agencies should review their current delivery systems to determine that:

- (1) Program options in regular education environments are available at local neighborhood schools.
- (2) Special education programs, to the maximum extent appropriate to student needs, are housed on regular school campuses and dispersed throughout the district.
- (3) The physical location of the program facilitates social interaction with non-handicapped students.
- (4) Individuals with exceptional needs have equal access to all regular education activities, programs, and facilities on the regular school site and participate in those activities as appropriate to their needs.
- (5) Administrative policies and procedures encourage close cooperation of all school personnel to facilitate opportunities for social interaction between individuals with exceptional needs and non-handicapped individuals.
- (6) Administrative policies and procedures allow individuals with exceptional needs maximum access to appropriate general education academic programs and school personnel are given necessary support to insure the student’s success.
- (7) Long-range plans and commitments for physical housing on regular school campuses are made in order to avoid frequent and disruptive program relocations.

- (8) Through long-range commitments for physical housing on regular school campuses, individuals with exceptional needs are afforded opportunities to develop and maintain continuing relationships with non-handicapped peers. [CDE, Office of Special Education, Policy Statement on LRE.]

### **17. Can the nature or severity of my child’s disability be used to justify a segregated educational setting?**

All students with disabilities have the right to an education in the LRE based on their individual educational needs rather than the label describing their disabling condition. Just because your child is labeled “severely retarded” or “seriously emotionally disturbed” does not necessarily mean that contact with nondisabled students would not be appropriate.

According to the *Holland* case a district must take all reasonable steps (including provision of supplemental aids and services) to reduce the burden to the regular education teacher and the other children in the class before removing a child with a disability from the regular education classroom. Federal law now requires that each IEP contain a statement of the program modifications or supports that school personnel will need so that the child can show progress on his IEP, be involved and progress in the general curriculum and participate in extracurricular and nonacademic activities, and be educated with nondisabled children. [20 U.S.C. Sec. 1414(d)(1)(A)(iii); 34 C.F.R. Sec. 300.347(a)(3).] The court in *Holland* said that merely requiring more attention than most children is not likely to impair the other children’s education.

The law does recognize that the nature or severity of a child’s disability may justify removal of a child from the regular class, particularly when the student disrupts other students. However, total removal from the regular education environment may not be warranted. The school district should still provide opportunities for interaction with nondisabled peers in extra-curricular or nonacademic settings when appropriate. [20 U.S.C. Sec. 1414(d)(1)(A)(iii); 34 C.F.R. Secs. 300.550(b)(1)(2) and 300.552.]

### **18. Does “least restrictive environment” apply to students in public institutions, residential or nonpublic school placements?**

Yes. Even if your child needs to receive services at a public institution, a residential facility or a nonpublic school placement, appropriate opportunities for participation

in regular education programs and activities must be made. Again, this determination is based on the student's individual needs as set forth in his IEP. [34 C.F.R. Sec. 300.554; Cal. Ed. Code Secs. 56850 and following.] Public Charter Schools are required to serve children with disabilities who are attending those schools in the same manner as students with disabilities in other public schools are served. [20 U.S.C. Sec. 1413(a)(5); 34 C.F.R. Sec. 300.312.]

### **19. Does regular education staff have to cooperate in providing my child with integration, full inclusion and mainstreaming opportunities?**

Special education law requires that the IEP document specify the supplementary aids and services necessary to ensure a student's participation in the regular education program. [20 U.S.C. Sec. 1414(d)(1)(A)(iii).] These supplementary aids and services might include, for example:

- (1) Special seating arrangements;
- (2) Modification of tests to accommodate the student's disability;
- (3) Curriculum modifications;
- (4) Instructional, behavioral, or health aides to accompany the student; and
- (5) Adaptive equipment.

Such arrangements apply to any class in which the student might participate — including physical education, art, music and vocational education. [34 C.F.R. Sec. 300.342 and 300.347.] **The IEP document is binding on the school district. Therefore, both special and regular education personnel must follow its provisions.**

The IEP team must include at least one regular education teacher of the child, if the child is or may be participating in regular education. [20 U.S.C. Sec. 1414(d)(1)(B)(ii); 34 C.F.R. Sec. 300.344(a)(2).] The regular education teacher must, to the extent appropriate, participate in the development of the IEP. This includes the determination of appropriate positive behavior interventions and strategies, the determination of supplementary aids and services, program modifications, and support for school personnel in providing the supplementary aids and services and program modifications. [20 U.S.C. Sec. 1414(d)(3)(C); 34 C.F.R. Sec. 300.346(d).] The regular education teacher must also participate in the review and any revision of the IEP of the student. [20 U.S.C. Sec. 1414(d)(4)(B).] Also, the school district must be represented at every IEP meeting by a school official who is

knowledgeable about the general curriculum and about the availability of resources of the local educational agency. [20 U.S.C. Sec. 1414(d)(1)(B)(iv); 34 C.F.R. Sec. 300.344(a)(4).]

The best way to ensure cooperation between the regular and special education programs is to make sure that adequate training and support are available to the regular education staff regarding the needs of your child. You can accomplish part of this through the IEP planning process by urging your child's regular education teacher to help draft the IEP by voicing his needs for modifications and support services. See Question 17 above. In addition, technical assistance and training in implementation of the Least Restrictive Environment requirement, as well as ongoing monitoring of local districts for compliance with this requirement, must be available from the State Department of Education to your local school district. [34 C.F.R. Sec. 300.555 and 300.556.] Lastly, each child's IEP must be made available to each of his teachers and any other staff who will be responsible for its implementation. Further, each teacher and other such person must be informed of his specific responsibilities related to implementing the IEP and the specific accommodations, modifications, and supports that must be provided for the child. [34 C.F.R. Sec. 300.342(b)(2) and (3).]

In addition, CDE and the local school districts have general responsibility to ensure that both regular and special education personnel are adequately prepared to provide instruction to special education students. Specifically, school districts must provide in-service training to regular and special education teachers who serve special education students about those students' needs. This program should include information on the latest educational practices as well as joint training of school personnel and parents. [34 C.F.R. Secs. 300.380, 300.382; Cal. Ed. Code Secs. 56001(o), 56240-43.]

## **20. Can the lack of a willing regular education teacher prevent my child from being educated in a regular classroom?**

No. The lack of adequate personnel or resources does not relieve school districts of their obligation to educate a child in the regular classroom in accordance with his IEP. Placement of a student in a particular regular class based on the competencies of the teacher is permitted. The district has an affirmative responsibility to ensure sufficient numbers of regular education teachers who are qualified, with needed aids and supports, to provide services to students with disabilities in regular educational environments. [*Questions and Answers on the Least Restrictive Environment*

*Requirements of the IDEA*, U.S. Department of Education, Office of Special Education and Rehabilitative Services, OSEP-95-9, 11/23/94, Question 6.]

**21. If I think my child’s right to an education in the least restrictive environment is being denied, what can I do?**

If your child’s IEP calls for a specific integrated placement or specific amounts of integration activities, and the school district is not following the IEP, you can file a compliance complaint with the CDE. If the school refuses to put integrated services or activities that you believe are appropriate into the IEP, you can ask for a fair hearing. See Chapter 6, *Information on Due Process Hearings/Compliance Complaints*.

**22. Can a hearing officer order a school district to start a new classroom to ensure placement in the least restrictive environment?**

A hearing officer must determine which type of placement is appropriate for a student with disabilities based on evidence presented at the hearing. A hearing officer is not authorized or required to limit her decision to available classrooms or personnel. If the evidence shows that a special day class on a regular school site is the LRE for your child, the hearing officer must order that type of placement. A school district must then make those services available. [California State Policy on the Authority of the Office of Administrative Hearings Regarding the Least Restrictive Environment; Federal Policy Letter on LRE, EHLR 211:384 (March 21, 1986).]

**23. How can I ensure that my district or county is moving toward an effective model of integrated services for all students with disabilities?**

If your school system is not yet fully integrated, or is just beginning to consider integrated or full inclusion options for its students with disabilities, you can take several actions. For example, you can approach your district’s **Community Advisory Committee/Council on Special Education (CAC)**. CACs are state-mandated committees of parents, district and agency personnel, which are present in every school system. [Cal. Ed. Code Secs. 56190-56194.] Ask your CAC how the district’s local Special Education Plan addresses integration, what options are currently available, how the CAC plans to participate in and/or monitor integration

planning, etc. The CAC may want to arrange for informational presentations from neighboring districts, parent, or university groups that are involved with parallel integration programs. They might also want to schedule a session with their own administration regarding the local plan. Several parent groups and CACs in California have begun district-wide Integration Task Forces composed of parents, CAC members, teachers, related service personnel, regular and special education administrators, interested disabled and nondisabled community members, regional center, advocacy group representatives, etc. These task forces have developed cooperative planning efforts with the goal of effective integration.

At the same time, parents and teachers have helped their district evaluate potential school sites for future integration. They have begun IEP development to ensure integration. Finally, some districts/counties have developed Board of Education policies on integration, full inclusion and mainstreaming at the request of their CAC and/or school administration. A board policy and/or resolution can be highly effective in developing an integration process.

Integration requires careful planning and structure, not a “dump and hope” approach, to be effective for all students. A cooperative planning group or task force representing all constituencies is essential.

If your district will not cooperate in developing integration services, or refuses to write integration language into your child’s IEP, you may use the compliance complaint or due process procedures set up through state and federal law. See Chapter 6, *Information on Due Process Hearings/Compliance Complaints*.

## **24. What if my school district tells me that my child can only get related services if she attends school on a segregated site?**

The school district cannot use location or availability of related services to justify placement on a segregated site. The district is responsible for providing necessary related services appropriate for the individual student in the least restrictive environment. [34 C.F.R. Sec. 300.552 and comment.]

CDE states:

The determination of appropriate program placement, related services needed, and curriculum options to be offered is made by the IEP team based upon the unique needs of the handicapped student rather than the label describing the handicapping condition or the availability of programs. [CDE, Office of Special Education, Policy Statement on LRE.]

USDOE has recently reemphasized that:

In all cases, placement decisions must be individually determined on the basis of each child's abilities and needs, and not solely on factors such as category of disability, significance of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience.

[34 C.F.R. Part 300, Appendix A, Q. 1, 64 Fed. Reg. 12471 (3/12/99).]

**25. I think my child could be in regular classes at least part of the day if she could be in the resource class the rest of the day. The school district says that the maximum time my child can be in a resource class is 50 percent of the school day. Is that true?**

There is a provision in state law limiting the amount of time a child can be enrolled in a resource class to 50 percent of a school day — without prior approval from the Superintendent of Public Instruction. [Cal. Ed. Code Sec. 56362(e).] Many school districts do not inform parents that they can obtain the superintendent's prior approval for placement in a regular class less than 50 percent of the time and in a resource class for more than 50 percent of the day — if this extra resource time is appropriate and least restrictive for the student. Usually, students for whom half-day regular class placement would not be appropriate are automatically placed in a special day class. As a result, these students do not receive any significant degree of integrated education. If you believe your child could benefit from the regular class environment, or should have the services of a resource teacher more than half of the school day, you should ask the IEP team to pursue approval from the Superintendent of Public Instruction pursuant to Education Code Sec. 56362(e). In addition, even if the Superintendent refused to approve such a request, any school district may apply to the State Board of Education for a waiver of any provision of state special education law, including a provision such as Education Code Sec. 56362(e). [Cal. Ed. Code Sec. 56101(a).]

**26. The school district says it will lose money if it places my child in a regular class more than half of the school day instead of in a special class. Is that true?**

As a result of Assembly Bill 602, state funding for special education changed in 1998 from a system which funded special education pupils' programs on the basis of

the kind of setting students were in to a system based on population. If “setting” or “environment” based funding still exists, it is because certain Special Education Local Plan Areas have not yet developed local plans which adopted the population-based system locally or have developed new plans but adopted the old “setting-based” funding system locally. In either case, a parent cannot let a school district’s revenue problem justify a denial of what a child is otherwise entitled to in the way of the least restrictive appropriate educational placement.

**27. What can I do to help make sure the supplementary aids and services my child needs in order to be appropriately served in regular education classrooms or other environments are provided?**

Both federal and state law require that school districts consider whether each special education student can be educated satisfactorily in a regular classroom with supplementary aids and services before another environment is considered. [20 U.S.C. Sec. 1412(a)(5); Cal. Ed. Code Sec. 56364.] Therefore, you should not have to do anything to help make sure that the necessary funds for supplementary aids and services are allocated and available to your local school district for your child. However, because of recent amendments to the Cal. Ed. Code, you may wish to facilitate the process of seeing to it that the necessary funds are allocated in advance.

The Cal. Ed. Code requires each Special Education Local Plan Area (SELPA)<sup>1</sup> to submit a plan to the State Superintendent each year. The plan must contain a budget, which is adopted by SELPA at a public hearing. Notice of the hearing must be posted in each school in SELPA at least 15 days before the hearing. The budget must separately identify the allocation for supplemental aids and services to meet the individual needs of pupils placed in regular education classrooms and environments. [Cal. Ed. Code Sec. 56205(b)(1)(E).]

If you anticipate that your child will be placed in a regular classroom or other regular environment wherein he will need certain supplemental aids and services in order to be appropriately served, you should write to the SELPA Director for your school district. In your letter, inform him of the intention to have your child in a

---

<sup>1</sup> A SELPA is a single large school district or collection of smaller school districts, which is organized to coordinate provision of regionalized special education services.

regular environment and the supplementary aids or services you believe will be necessary for your child in that environment. You should also request, pursuant to Cal. Ed. Code Sec. 56205(b)(1)(E), that he allocate the necessary funds in the SELPA plan budget for the supplemental aids and services you have described. Send a copy of your letter to your local school district special education administrator. Keep a copy of your letter for your records. Notifying your SELPA to budget for the supplementary aids and services your child needs in a regular educational environment does not assure that your child will be placed in such an environment if the district can show that such a placement would be inappropriate under the analysis described earlier in this chapter.

**28. Must I write a letter requesting allocation of funds for supplementary aids and services in order to be entitled to them?**

No. The requirement of a budget allocation for supplementary aids and services in every annual SELPA budget plan places no new obligation on parents to ask to be included in it and failure to request an allocation for supplementary aids and services in advance does *not* preclude anyone from having these services provided. However, putting your SELPA on notice of the potential need for this allocation should eliminate the excuse by the SELPA that it did not know, when it was formulating its budget, that such funds would be needed. Our recommendation for such a written request is made only in an effort to remove insufficient funds from the list of reasons a school district may give parents at an IEP meeting for its refusal to integrate their child.

**29. I was not aware of the SELPA budget plan development process or the time lines. Will it do any good to request an allocation for supplementary aids and services for my child after the SELPA budget plan has been approved and the budget year has begun?**

Yes. The annual budget allocation plan may be revised during any fiscal year. [Cal. Ed. Code Sec. 56205(b)(2).] Any time you believe a supplementary aid or service is needed for your child in a regular educational environment, you may request it and the necessary funds to pay for the service should be available or should be made available.

**30. My child is preschool age. Do the least restrictive environment requirements apply to my child? What if my district does not offer any preschool for children without disabilities; how will my child be able to integrate with any nondisabled children?**

The least restrictive environment requirements apply to preschool age special education pupils also. [34 C.F.R. Sec. 300.552.] “The full continuum of alternative placements at 34 C.F.R. Sec. 300.551, including integrated placement options, such as community-based settings with typically developing age peers, must be available to preschool children with disabilities.” [64 Fed. Reg. 12639 (3/12/99).] In the past, some suggestions made to school districts by the USDOE for meeting the LRE requirement for preschoolers included placement in a Head Start program, or private preschool placement.

If a school district operates general education preschool programs, then the requirements for having a general education teacher at every IEP meeting if the child is or may be participating in the general education program apply. A general education teacher from the district’s general education preschool program would likely be selected to attend the meeting. If a district does not operate programs for preschoolers without disabilities, the district would have to designate an individual who meets state standards for teaching preschool-age children without disabilities to attend the meeting. [64 Fed. Reg. 12472 (3/12/99).]

**31. Do the 1997 amendments to the federal law have any impact on the school district’s duty to educate my child in the least restrictive environment?**

Most importantly, Congress recognized that funding systems in the states are often geared toward the funding of special classes and settings on the assumption that specialized settings are where special education students most often are served. In the June 1997 amendments, Congress provided that if a state uses a funding system which is based on the type of setting in which a child is served, the funding system must not result in placements which violate the requirement of placement in the least restrictive appropriate environment. If a state does not have policies and procedures in place to assure that the least restrictive environment requirement is not violated by the way its funding system works, the state must assure the federal government that it will change its funding system as soon as possible. [20 U.S.C. Sec. 1412(a)(5).]

~~In addition, Congress made several important findings about the value and benefits of inclusive and integrated education for special education pupils.~~

~~Over 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by having high expectations for such children and ensuring their access in the general curriculum to the maximum extent possible [and by] providing appropriate special education and related services and aids and supports in the regular classroom to such children, whenever appropriate[.] [20 U.S.C. Sec. 1400(c)(5)(A) and (D).]~~

Congress also defined the term “supplementary aids and services” for purposes of describing what kinds of things might be provided by the school district to a special education pupil in a regular classroom.

The term ‘supplementary aids and services’ means, aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate... [20 U.S.C. Sec. 1401(29).]

Congress also provided that supplementary aids and services used to appropriately support a special education student in a regular class may benefit children without disabilities as well. [20 U.S.C. Sec. 1413(a)(4)(A).] For example, although such services must first be used to meet the needs of the special education student, the use of an instructional or behavioral aide in a classroom for a special education student may also benefit one or more nondisabled students in that class or another class.

Because the requirement may have been forgotten or ignored in some states, Congress reminded school districts that the parent must be part of any group that makes decisions about the educational placement of a child. [20 U.S.C. Sec. 1414(f).]

Congress reminded school districts that even if a child’s placement is changed to an interim alternative setting for disciplinary reasons, the interim setting must be one which allows the child to continue to participate in the general education curriculum. See Chapter 6, *Information on Due Process Hearings/Compliance Complaints* and Chapter 8, *Discipline of Students with Disabilities* for a full explanation. [20 U.S.C. Sect. 1415(k)(3)(B)(i).]

**32. I would like to have my child placed in a regular class, but the school said my child has to prove himself capable of handling the subjects and activities of the regular class before it will consider placing him there, is this correct?**

No, recent federal provisions clarify that children need not prove themselves before they are considered for regular class placement.

[A] student need not fail in the regular classroom before another placement can be considered. Conversely, IDEA does not require that a student demonstrate achievement of a specific performance level as a prerequisite for placement into a regular classroom. [34 C.F.R. Part 300, App. A, Q. 1; 64 Fed. Reg. 12471 (3/12/99).]

**33. My child is transitioning out of school and special education and into more adult programming opportunities, do the requirements for programming to the maximum extent appropriate with nondisabled peers apply to transitioning students as well?**

Yes. Under federal law, all children between the ages of 3 and 21 are entitled to a Free Appropriate Public Education (FAPE). [20 U.S.C. Sec. 1412(a)(1).] As to children age 18 to 21, this is true so long as it would not conflict with state laws governing pupils this age. California extends special education eligibility to 18 to 22-year-olds. [Cal. Ed. Code Sec. 56026(c)(3) and (4).] FAPE means the receipt of an IEP that conforms with all the federal requirements for access to the general curriculum, participation in general nonacademic and extracurricular activities, and placement in a regular class. [20 U.S.C. Sec. 1401(8) and Sec. 1414(d)(1)(A)(i) – (iv).] State law also ensures transition in the least restrictive environment and provides: “The goal of transition services is planned movement from secondary education to adult life that provides opportunities which maximize economic and social independence in the least restrictive environment...” [Cal. Ed. Code Sec. 56460(e).]

**34. My child is integrated into the regular classroom during the regular academic year. Should that integrated programming be available during the extended school year?**

If ESY services are available to regular education students in your school district and if your child's IEP includes integration in the regular classroom during the regular academic year, those integrated services must be provided during the extended school year. [5 C.C.R. Sec. 3043(h).]

**35. During the IEP meeting, the district told me that the function of the IEP team was to determine what my child's present educational levels are and what his goals and services should be, but that it was then up to the district to determine the placement that would be best to implement the IEP. Is that correct?**

No. The parent must be part of any group of people who make a child's special education placement decision. [20 U.S.C. Sec. 1414(f).] In addition, the team, including the parent, that makes placement decisions must be guided by the requirement that special classes, separate schooling or other removals of children with disabilities from general classes only occurs if the nature or severity of the disability is such that education in general education classes, with supplementary aids and services, cannot be achieved satisfactorily. [Cal. Ed. Code Sec. 56342(b); 34 C.F.R. Sec. 300.550(b)(2).]

(Blank page)

## **Appendix I**

### **Indicators of Fully Inclusive Programs for Students with Disabilities**

The following characteristics are indicators of fully inclusive programs for students with disabilities. They can serve as guidelines in planning for inclusion and also as a means for maintaining the integrity of the term, Inclusive or Supported Education.

- (1) Students are members of chronologically age-appropriate general education classrooms in their normal schools of attendance, or in magnet schools or schools of choice when these options exist for students without disabilities.
- (2) Students move with peers to subsequent grades in school.
- (3) No special class exists except as a place for enrichment activities for all students.
- (4) Disability type or severity of disability does not preclude involvement in full inclusion programs.
- (5) The special education and general education teachers collaborate to ensure:
  - (A) The student's natural participation as a regular member of the class;
  - (B) The systematic instruction of the student's IEP objectives; and
  - (C) The adaptation of core curriculum and/or materials to facilitate student participation and learning.
- (6) Effective instructional strategies (e.g., cooperative learning, activity based instruction, whole language) are supported and encouraged in the general education classroom.
- (7) The staff to student ratio for an itinerant special education teacher is equivalent to the special class ratio and aide support is at least the level it would be in a special class.
- (8) Supplemental instructional services (e.g. communication, mobility, adapted P.E.) are provided to students in classrooms and community settings through a transdisciplinary team approach.
- (9) Regularly scheduled collaborative planning meetings are held with general education staff, special education staff, parents and related-service staff in attendance as indicated, in order to support initial and ongoing program development and monitoring.

- (10) There is always a certificated employee (special education teacher, resource specialist or other) assigned to supervise and assist any classified staff (e.g., paraprofessional) working with specific students in general education classrooms.
- (11) Special education students who are fully included are considered a part of the total class count for class size purposes. In other words, even when a student is not counted for general education ADA, s/he is not an “extra” student above the contractual class size.
- (12) General ability awareness is provided to staff, students and parents at the school site through formal or informal means, on an individualized basis. This is most effective when ability awareness is incorporated with general education curriculum.
- (13) Plans exist for transition of students to next classes and schools of attendance in inclusive situations.
- (14) Districts and SELPAs obtain any necessary waivers of the Education Code to implement supported education.
- (15) Supported education efforts are coordinated with school restructuring at the district and site level.

In summary, all students are members of the general education classroom, with some students requiring varying levels of support from special education. Hence the term “Supported Education.” This term, though synonymous with “Full Inclusion”, is explicit in acknowledging the importance of providing support services within the regular classroom, when necessary, to ensure a quality educational program.

PEERS 1992

With appreciation to Dr. Wayne Sailor, “Special Education in the Restructured School” *Remedial and Special Education*, 12, 6 (1991).

[1992 DRAFT

Authors: Neary, T.; Halvorsen, A.; and Smithey, L.  
*Inclusive Education*, Sacramento, PEERS Project.]