

Wyoming Department of Education
Special Programs Unit

Reference Guide:
Least Restrictive Environment

Children with disabilities have the right to be educated in the least restrictive environment (LRE). The Individuals with Disabilities Education Act (IDEA) mandates that all children with disabilities, regardless of the nature and severity of their disability, must be educated to the maximum extent appropriate with children who are not disabled. It is the responsibility of the child's team, usually the IEP team, to determine the LRE for each student with an IEP. The Federal Regulations addressing the LRE requirements are located at 34 C.F.R. §§300.114 through 300.118. The Wyoming Department of Education Rules applicable to LRE are located in Chapter 7, Section 5(b). In addition to familiarity with the Federal Regulations and Chapter 7 Rules, understanding the historical perspective of LRE helps to clarify today's expectations.

The History

In 1975, Congress passed the Education for All Handicapped Children Act (EHA), better known at the time as Public Law 94-142, to change an untenable situation. Many children with disabilities were routinely excluded from public schools. Public Law 94-142 proved to be landmark legislation, requiring public schools to provide for students with a broad range of disabilities - including physical handicaps, mental retardation, speech, vision and language problems, emotional and behavioral problems, and other learning disorders - with a "free appropriate public education." Moreover, it called for school districts to provide such schooling in the "least restrictive environment" possible. *The History of Special Education, Rethinking Schools*, Spring 2002. The Education for All Handicapped Children Act was eventually reauthorized and renamed the Individuals with Disabilities Education Act (IDEA).

One of the first interpretations of the LRE requirement contained in Public Law 94-142 came from the Bureau of Education of the Handicapped, the predecessor to the current Office of Special Education.

The least restrictive environment (LRE) provision is intended to enable the handicapped child to go as far as possible in the regular education program. Similarly, the special education and related services that are established in the child's individualized education program should designate those special services that are to be provided to insure that the least restrictive environment is maintained. The intent of this requirement is that handicapped children will benefit from education in regular classes if it is in the best interest of the child and that child is able to participate.

Letter to Mordick, Bureau of Education for the Handicapped (1979).

Several landmark court decisions have provided further guidance on the concept of delivering a free appropriate public education (FAPE) in the LRE. These early cases devised "tests" to determine if the LRE requirements were met based on an individual set of facts. In the seminal case of *Roncker v. Walter*, 554 IDELR 381 (6th Cir. 1983), cert. denied, 104 S. Ct. 196 (1983), the Sixth Circuit observed that:

The Act does not require mainstreaming in every case but its requirement that mainstreaming be provided to the maximum extent appropriate indicates a very strong congressional preference. The proper inquiry is whether a proposed placement is appropriate under the Act. In some cases, a placement which may be considered better

for academic reasons may not be appropriate because of the failure to provide for mainstreaming.

According to the *Roncker* court:

[T]he proper inquiry is whether a proposed placement is appropriate under the Act. . . . In a case where the segregated facility is considered 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 Act.

Similarly, in *Daniel R.R. v. State Board of Education*, 441 IDELR 433 (5th Cir. 1989), the Fifth Circuit explained that:

Although Congress preferred education in the regular education environment, it also recognized that regular education is not a suitable setting for educating many handicapped children. Thus, the EHA allows school officials to remove a handicapped child from regular education or to provide special education if they cannot educate the child satisfactorily in the regular classroom. Even when school officials can mainstream the child, they need not provide for an exclusively mainstreamed environment; the Act requires school officials to mainstream each child only to the maximum extent appropriate. (*Internal citations omitted.*)

According to the *Daniel R.R.* court:

Adhering to the language of the EHA, we discern a two part test for determining compliance with the mainstreaming requirement. First, we ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. If it cannot and the school intends to provide special education or to remove the child from regular education, we ask, second, whether the school has mainstreamed the child to the maximum extent appropriate. (*Internal citations omitted.*)

In addition to *Roncker* and *Daniel R.R.*, the case of *Oberti v. Board of Education of Borough of Clementon Sch. Dist.*, 19 IDELR 908 (3rd Cir. 1993) provides guidance on other relevant factors to be considered in determining the LRE. The *Oberti* court identified the following test to determine if a child with a disability can be “educated satisfactorily” in a regular class with supplementary aids and services:

1. Consider whether the school district has made reasonable efforts to accommodate the child in a regular classroom.
2. Consider the educational benefits available to the child in a regular classroom, with appropriate supplementary aids and services, as compared to the benefits provided in the segregated, special classroom. Educational benefits are considered to be both academic in nature, as well as nonacademic opportunities, which can include the development of social and communication skills, increased sense of self-esteem, and language and role modeling.
3. Consider the possible negative effects of the child’s inclusion on the other students in the class.

The two LRE tests established in *Roncker* and *Daniel R.R.*, and the factors in *Oberti* remain the legal standard by which LRE disputes are judged today.

The Present

The LRE test established by the *Roncker* court has been adopted, at least in part, in other Circuit Courts of Appeal, including the 4th Circuit and the 8th Circuit. The *Daniel R.R.* test established by the 5th Circuit has been more widely adopted in other Circuits, including the 2nd Circuit, 3rd Circuit, the 9th Circuit with slight variations, the 10th Circuit, and the 11th Circuit. Since Wyoming is located within the jurisdictional boundaries of the 10th Circuit, it is important to understand the case that decided the LRE test for this Circuit. In *L.B. v. Nebo School District*, 41 IDELR 206 (10th Cir. 2004), the school district considered mainstreaming opportunities for a preschooler with autism, but offered the child a placement in its preschool populated mainly by students with disabilities. The parents declined the offer and kept their daughter in a mainstream private preschool where she was progressing successfully with the use of a supplementary aide and a more intensive at-home ABA program. The 10th Circuit determined the district's placement violated the LRE requirement. The other children at its preschool functioned at a considerably lower level than this child. The mainstream school provided the child with more appropriate role models, had a more balanced gender ratio, and was generally better suited to meet her behavioral and social needs.

In rendering its decision, the *Nebo* court reasoned:

This Circuit has not yet adopted a specific standard for determining whether the LRE requirement has been met. The facts of this case, however, directly involve a school district's refusal to fund the level of supplementary aids and services which Appellants allege were necessary to keep a child in a regular classroom and its concomitant offer of placing the child in a mixed classroom environment instead. These facts necessitate this court's adoption of an LRE test. This court does not adopt the *Roncker* test for an LRE. The *Roncker* test is most apposite in cases where the more restrictive placement is considered a superior educational choice. This feature makes the *Roncker* test unsuitable in cases where the least restrictive placement is also the superior educational choice. For that reason, the *Roncker* test is not appropriate in all cases. The *Daniel R.R.* test, on the other hand, better tracks the language of the IDEA's least restrictive environment requirement and is applicable in all cases. (*Internal citations omitted.*)

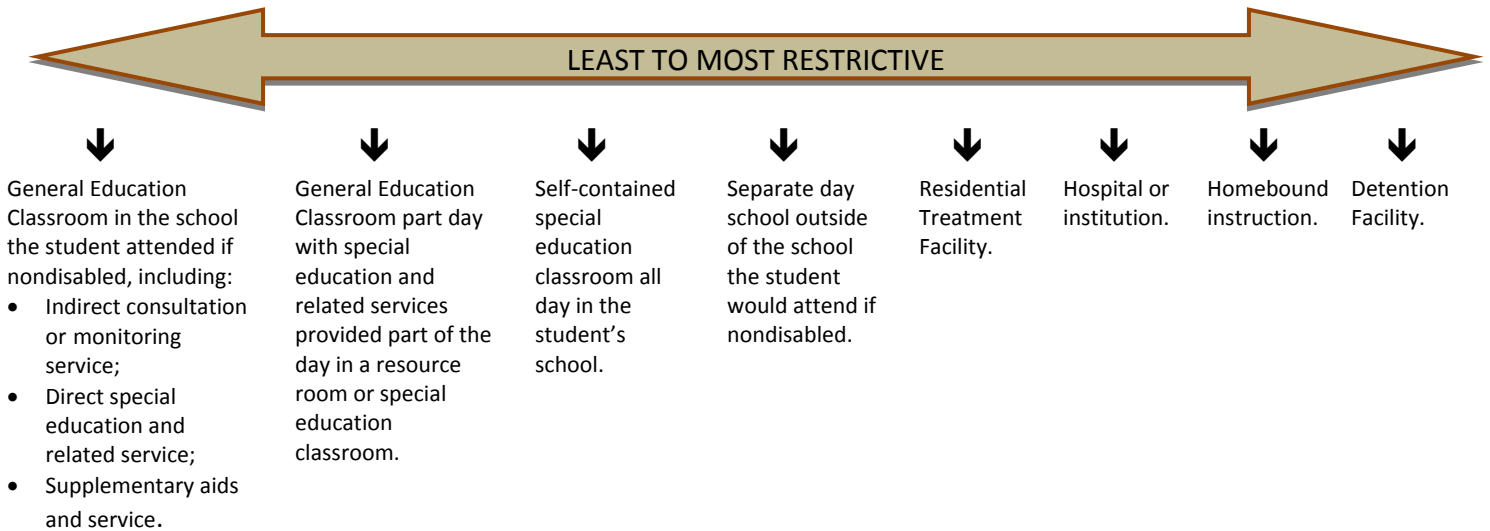
The *Nebo* court also considered the balance between academic and nonacademic benefits of the mainstream preschool placement. The student benefited academically and also non-academically, as the mainstream placement provided the student with more appropriate role models, a more balanced gender ratio, and more suited to the child's behavioral needs. These considerations weighed heavily in favor of the mainstream preschool setting as the student's LRE.

In Practice

The requirements of 34 C.F.R. §300.114(a) are commonly referred to as the LRE Mandate: Each school district or public agency must ensure that –

1. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled, and
2. Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

34 C.F.R. §300.115 requires each school district or public agency to provide a continuum of alternative placements to meet the needs of children with disabilities. The LRE for a student is the most inclusive point on the continuum in which the student’s IEP can be satisfactorily implemented with the provision of supplementary aids and services. This placement decision must be made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of evaluation data, and the placement options. *34 C.F.R. §300.116(a)*. Usually, the student’s IEP team makes the placement decision. The following examples are offered to illustrate the LRE continuum:



Placement decisions must be based on the student’s needs, goals, and services as identified in the IEP. Because placement can only be determined after the identification of needs, goals, and services, placement considerations are discussed at the end of an IEP meeting. *See Letter to Richards*, 211 IDELR 433 (OSEP 1987). LRE placement determinations must be comprehensively examined at each annual IEP meeting, or more frequently as the student’s needs change.

Key Considerations

When determining the LRE for a student, the team should keep in mind the following considerations:

- The LRE mandate applies to:
 - ◊ All general education environments. The term “regular education environment” encompasses regular classrooms and other settings in schools, such as lunchrooms and playgrounds in which children without disabilities participate. *34 C.F.R. §117* and *71 Federal Register 46585*.
 - ◊ Extended School Year (ESY) services. However, it is not required that a school district or public agency replicate the full continuum during ESY. *Letter to Myers*, 16 IDELR 290 (OSEP 1989).
 - ◊ Nonacademic and extracurricular services and activities, whether before or after school or during school breaks if the IEP team determines that participation in the nonacademic services and activities are an appropriate and necessary component of FAPE for the student. The provision of supplementary aids and services may be necessary in order for the student to participate in nonacademic or extracurricular services and activities. *34 C.F.R. §117*.
 - ◊ All preschool programs and services provided under Part B of the IDEA.
- LRE must be determined at least annually, or more frequently as the student’s needs change.

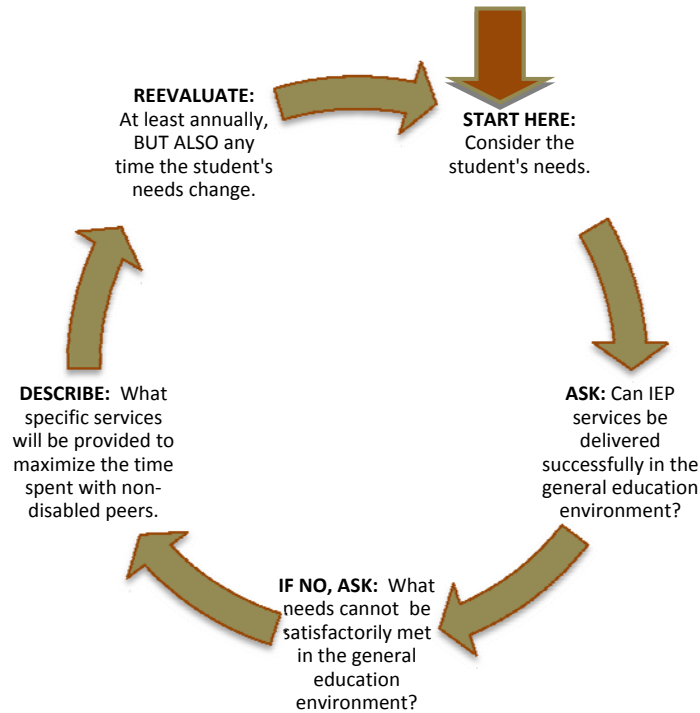
- Placement teams must first consider the placement of a student with a disability in the regular classroom. Based on the student’s abilities and needs, the team must take into account the full range of supplementary aids and services that could be provided to facilitate the student’s placement in the regular education environment. *Letter to Cohen*, 25 IDELR 516 (OSEP 1996).
- Although cost may not be the sole consideration, school districts or public agencies may consider the cost of supplementary aids and services they must provide in order to maintain a child with disabilities in a regular classroom as part of the LRE determination. If the cost of educating a disabled child in a regular classroom is so great that it would significantly impact the education of other children, then cost can be a factor in the LRE determination. *Greer v. Rome City Sch. Dist.*, 18 IDELR 412 (11th Cir. 1991). However, a district’s claim of excessive costs will be scrutinized very carefully. *Sacramento City Unified Sch. Dist. v. Holland*, 20 IDELR 812 (9th Cir. 1994).
- Decisions about placement in general education should not be based solely on whether the student can “keep up.” The determination must be individualized. A special education placement cannot be justified on the grounds that a child might make greater academic progress away from the regular education environment. *Oberti v. Bd. Of Educ. Of Borough of Clementon Sch. Dist.*, 19 IDELR 908 (3rd Cir. 1993).
- The fact that a student learns in a different manner from other students cannot serve as the sole basis for selecting a more restrictive placement. Generalizations about the LRE for children with disabilities who have IQs in the 60s or less are not appropriate, as determinations about LRE must be made on a case-by-case basis. *Letter to Chrin*, 18 IDELR 1309 (1992).
- Administrative convenience cannot play a role in a decision to place a student with a disability in a more restrictive setting. A student’s removal from the regular education environment cannot be based on configuration of the delivery system, availability of educational or related services, availability of space or administrative convenience. *Letter to Van Wart*, 20 IDELR 1217 (OSEP 1993).
- Placement decisions may never be made solely on disability category. The process for determining the educational placement for children with low-incidence disabilities is the same process used for determining the educational placement for all children with disabilities. That is, each child’s educational placement must be determined on an individual basis depending on each child’s unique educational needs and circumstances, rather than the disability category. *71 Federal Register 46585*.
- Although the IDEA expresses a strong preference for mainstreaming, districts cannot lose sight of their obligation to provide FAPE. A student’s placement on the LRE continuum must be based on her unique needs. *See P. v. Newington Bd. Of Educ.*, 51 IDELR 2 (2nd Cir. 2008), and *B.S. v. Placentia-Yorba Linda Unified Sch. Dist.*, 51 IDELR 237 (9th Cir. 2009).

In Summary

The IDEA clearly mandates that any student with a disability be educated with children who are nondisabled to the maximum extent appropriate. Placement teams should start every LRE determination from the presumption that children with disabilities will be educated in classes and settings with their nondisabled peers unless the education of these children cannot be achieved satisfactorily with the use of supplementary aids and services. *See Letter to Wohle*, 50 IDELR 138 (OSEP 2008). The following Dialogue Guide is meant to assist placement teams in the LRE determination process

LRE Dialogue Guide

This Dialogue Guide is designed to help placement teams make LRE compliant placement decisions.



- Review the student's needs, IEP goals, and current educational (academic and nonacademic) environments.
- Begin with the assumption that the appropriate placement for the student is in the general education classroom in the school the student would attend if nondisabled.
- Determine whether the student's IEP goals can be implemented satisfactorily in the general education environment. If YES, general education is the LRE for this student. If NO, then proceed.
- Discuss supplementary aids and services to determine whether:
 - The student needs additional supports in order to be successful in the general education environment.
 - The student needs supports in nonacademic settings, i.e. meals, recess, etc., in order to be successful in the general education environment.
 - The student needs to participate in nonacademic services, i.e. athletics, clubs, etc., in order to receive FAPE.
- Determine whether the student can be educated satisfactorily in the general education environment with the addition of supplementary aids and services. If YES, general education with supplementary aids and services is the LRE for this student. If NO, then proceed:
- Despite the addition of supplementary aids and services, the student is unable to be satisfactorily educated in the general education environment for the entire school day. Specifically identify and explain:
 - What, if any, portions of the school day the student can be satisfactorily educated with nondisabled peers.
 - For any portion of the day the student is unable to be satisfactorily educated with nondisabled peers, the placement on the least restrictive continuum as close as possible to the student's home.
 - The reasons why less restrictive placements are not appropriate.