Spotlight On Practice

LRE Beyond the Classroom

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What We’ll Focus On. . . .

- LRE Principles Generally
- Nonacademic Services and Extracurricular Activities
- Transportation
- ESY Services
- Application of LRE to Students in Other Nontraditional Settings
A Quick LRE Refresher . . .

- IDEA and Section 504 contain similar LRE provisions
- To the maximum extent appropriate, students with disabilities should be educated with nondisabled students; and
- Special classes, separate schooling, or other removal from general educational environment occurs only if nature or severity of disability is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily

(34 C.F.R. § 300.114; Ed. Code § 56040.1; 34 C.F.R. § 104.34)
Districts must ensure that continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services.

“Continuum of alternative placements” is range of potential placements in which a district can implement student’s IEP.

(34 C.F.R. § 300.115)
Nonacademic and Extracurricular Services and Activities
Nonacademic and Extracurricular Services and Activities: Legal Standard

- Districts must take steps, including the provision of supplementary aids and services:
  - Determined appropriate and necessary by IEP team
  - To provide nonacademic and extracurricular services and activities in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities

- Districts must ensure students participate with nondisabled students to maximum extent appropriate

(34 C.F.R. § 300.107; 34 C.F.R. § 300.117)
Nonacademic and Extracurricular Services and Activities: Legal Standard

- Supplementary aids and services determined appropriate and necessary for participation must be documented in IEP

- Nonacademic and extracurricular services and activities can include:
  - Counseling services
  - Athletics
  - Transportation
  - Health services
  - Recreational activities
  - Special interest groups or clubs sponsored by the public agency

(34 C.F.R. § 300.107; 34 C.F.R. § 300.320)
Nonacademic and Extracurricular Services and Activities: Legal Standard

- IEP team may choose to include participation in one or more specific nonacademic and extracurricular service or activity in the student's IEP, at which point participation in the identified service or activity becomes part of the student’s FAPE.

- Balancing act for IEP teams
  - Consideration of supports necessary to access nonacademic and extracurricular services and activities; AND/OR
  - Requiring such supports as a necessary component of FAPE.
Application of LRE

- LRE as applied to nonacademic and extracurricular services and activities is frequently analyzed as part of “equal opportunity for participation,” but is also component of FAPE when the IEP requires participation in specific services or activities.
What About Section 504?

- Same “equal opportunity for participation” standard as IDEA
- Must ensure that students with disabilities participate with nondisabled students to maximum extent appropriate
- Nondiscrimination requirements also apply

(34 C.F.R. § 104.4; 34 C.F.R. § 104.34; 34 C.F.R. § 104.37)
IEP Team Practice Pointers:

- **Be Proactive!** Ask what extracurricular or nonacademic services or activities interest student, then turn to what services/supports are needed for equal opportunity.

- **Be Clear!** There is a difference between access and FAPE, so specify whether student’s involvement is required to provide FAPE and explain why.

- **Be Authoritative!** Staff who supervise programs should be involved in decision-making, but remember that any participation decision is up to IEP team.
Athletics and Other Competitive Nonacademic Programs

- Simply because student is eligible under IDEA or Section 504 does not mean that he/she must be allowed to participate in selective or competitive programs (e.g., interscholastic athletics, band, chorus, etc.)

- Districts may require level of skill or ability in order for student to participate, so long as selection criteria are based on same nondiscriminatory standards applicable to all students
Athletics and Other Competitive Nonacademic Programs

- If a particular aid, service or “reasonable modification” is necessary in order to provide equal opportunity to participate, district must offer it unless doing so would fundamentally alter nature of activity or give student an unfair advantage

  - Example: Using visual cue for student with hearing impairment to signal start of 200-meter dash would be appropriate modification because it would not provide unfair advantage

(Dear Colleague Letter (OCR 2013) 60 IDELR 167)
Athletics and Other Competitive Nonacademic Programs

Practical LRE Lessons

- If IEP contains supplementary aids and services related to participation in specific nonacademic program, IEP team must make sure they are faithfully implemented or risk a finding that student was denied FAPE

- Example: Student’s IEP contained counseling services to facilitate participation in band, but services were not provided and Student was removed from band for “inappropriately touching” other students
  - District denied FAPE as IEP team had determined counseling was necessary for Student to have equal opportunity to participate
  (Alcorn County School Dist. (SEA MS 2009))
Athletics and Other Competitive Nonacademic Programs

**Practical LRE Lessons**

- When including IEP language regarding student’s opportunity for participation in athletics or extracurricular activities, make sure to explain this provision of IEP to parents to avoid subsequent misunderstanding.

- Example: Parents believed IEP provision that Student would have “opportunity to participate” guaranteed him spot on football team.
  - ALJ: Language simply meant he was eligible to participate; guarantee would “give disabled students discriminatory priority over nondisabled students” (Lauderdale County Bd. of Educ. (SEA AL 2002))
There may be legitimate reasons why IEP might provide restrictive setting for lunch or recess (e.g., allergies or behavior issues).

If IEP or Section 504 plan does not address lunch or recess, it is presumed that student will participate in same manner as nondisabled students (and be provided with supplementary aids and services determined appropriate and necessary to do so).
Practical LRE Lessons

Failure to inform staff about any restrictive provisions in a student’s IEP or Section 504 plan can lead to findings of a denial of FAPE and/or discrimination if IEP is not implemented and unintended consequences result.

Example: New principal was not aware of Student’s IEP, which called for separate lunch from peers because he was “picked on”; Student ate lunch with classmates, got into fight and was suspended.

Violation of Section 504, despite District’s contention that Student failed to mention that he had an IEP (Durant (IA) Community School Dist. (OCR 2013))
Practical LRE Lessons

For students with food allergies, districts must weigh any restrictive provisions of student’s IEP or 504 plan against what steps can reasonably be taken to protect student while still allowing for full participation with peers.

Example: Parent claimed providing Student with peanut-free table where he would sit apart from his class was overly restrictive.

Student was neither isolated nor treated less favorably than other students, since he ate in cafeteria daily; differences in seating were necessary to meet safety needs.

(Upper Dublin School District (SEA PA 2010))
Field Trips

- Generally, district has burden of showing why student should not participate with his or her peers (e.g., supportable belief that attending the trip presents unacceptable risk to student’s health or safety).

- Otherwise, district must provide necessary supplementary aids and services for student to participate in school-sponsored field trips.
Field Trips

Practical LRE Lessons

- Staff members should not make unilateral decisions about excluding students with disabilities from field trips (or other school events); IEP or Section 504 team should make this determination.

- Example: Principal decided that Student should not participate in field trip to Washington D.C. based on concerns for her safety, as Student had recently been discharged from mental health facility.
  - Decision to exclude Student was not made by a group of knowledgeable persons (i.e., Section 504 team).
  
  (Mattituck-Cutchogue (NY) Union Free School Dist. (OCR 2013))
Field Trips

- **Practical LRE Lessons**
  - Requiring parent’s presence on field trip when similar obligation is not imposed upon parents of nondisabled students constitutes discrimination and denial of an equal opportunity to participate in the activity.

  - Example: District “asked” Parent of Student with diabetes to attend field trip because school staff was not able to give Student insulin.
    - Relying on Parent to attend trip in order to provide accommodations that were District’s responsibility violated law (Park City (UT) School Dist. (OCR 2016)).
Other School-Sponsored Events

- In providing other nonacademic services—such as school-sponsored dances, plays and other events—districts must ensure that students with disabilities participate with nondisabled students to maximum extent possible, even if those events are held off-campus.
Other School-Sponsored Events

- Practical LRE Lessons
  - Nondiscriminatory policies regarding participation in school-sponsored activities may still violate the law if unintentional discrimination results from the policy’s implementation

  - Example: Students with disabilities purchased prom tickets late as group and, as a result, were all assigned together on last bus to prom
    - Prom ticket policy resulted in impermissible segregation from nondisabled peers
      (Marblehead (MA) Pub. Schools (OCR 2015))
Other School-Sponsored Events

- **Practical LRE Lessons**
  - Equal opportunity also requires provision of equal notice about upcoming school- or class-sponsored events; failure to provide equal notice can result in exclusion of students with disabilities
  - Example: Policy called for gen ed homeroom teachers to relay information about upcoming events, but no mechanism existed to ensure that special ed homeroom teachers did so
    - Lack of equal notice is form of different treatment that is not in compliance with equal opportunity requirements
      - (Metropolitan Nashville (TN) School Dist. (OCR 2009))
Graduation Ceremonies

- Students with disabilities are eligible to participate in whatever graduation ceremonies in which students without disabilities are eligible to participate.

- But no legal prohibition on excluding students with disabilities from participation for disability-related misconduct if, for example, student poses threat to himself/herself or to others.
Graduation Ceremonies

- Practical LRE Lessons
  - District must have legitimate and nondiscriminatory reason to segregate students with disabilities from nondisabled students at graduation ceremony and difference in treatment must be minimal
  
  - Example: District seated three students with hearing impairments together in front row instead of in alphabetical order like others
    
    - Legitimate reason for decision, as location where students were seated offered view of sign language interpreter and students were still able to participate with peers
      
      (Modesto (CA) City Unified School Dist. (OCR 2004))
After-School Programs

- If district offers one or more after-school programs, it must provide services necessary for students with disabilities to participate and take advantage of the program’s benefits, unless doing so would cause undue burden or fundamental alteration of program.
After-School Programs

Practical LRE Lessons

- Staff members should be trained to provide necessary health-related services to facilitate participation in after-school programs

- Example: Staff of after-school program contacted Parent whenever problem arose with Student’s colostomy bag and Parent claimed that he had to go to the program almost daily to change the bag
  - District’s failure to provide necessary aids and services effectively denied Student meaningful participation and equal access to the after-school program (Alachua County (FL) School Dist. (OCR 2009))
Transportation
Transportation

- Can be “nonacademic and extracurricular service” or related service if student requires transportation for FAPE
- IDEA related service definition of “transportation” includes:
  - To and from school and between schools
  - In and around school buildings
  - Specialized equipment if required to provide transportation (i.e., adapted buses, lifts, ramps)
- Also can include:
  - Safety devices, curb cuts, specialized seats, harnesses, handrails, two-way radios, emergency medical equipment, and more . . .

(34 C.F.R. § 300.34(c)(16))
Transportation

- Must be included as related service if student’s disability causes “unique need” for transportation
- Needs can include:
  - Medical health needs
  - Accessibility of curbs, sidewalks, etc.
  - Age of student
  - Cognitive ability, adaptive behavior, and/or communication skills
  - Behavior plans during transport
  - Distance/duration of ride
  - Nature of areas traveling through
  - Other public assistance in route
Transportation LRE Spectrum

- None
- Regular school bus
- Regular school bus with supports
- Public transportation
- Special education designated bus
- Taxi or specialized shuttle
- Medical transportation
- Parent transport with reimbursement
Transportation

- **Practical LRE Lessons**
  - Before determining that student requires more restrictive transportation, IEP teams always should consider various aids and services options that might allow student to remain on same bus with his or her nondisabled peers.
  - Example: Parents believed Student could ride regular bus if he were assigned “bus buddy” (a nondisabled nephew) to watch over him, but District insisted Student remain on special ed bus.
    - Refusal to consider or attempt “bus buddy” option violated IDEA’s LRE requirement
ESY Services
So What Is ESY?

Special education and related services that:

- Meet state standards
- Are provided to a special education student beyond the district’s normal school year
- Are provided in accordance with student’s IEP
- Are provided at no cost to parents
- Are provided only if IEP team determines that services are needed for student to receive FAPE

(34 C.F.R. § 300.106)
ESY and LRE

- Application of LRE to ESY
  - No exception in LRE requirement for ESY
  - OSEP: Does not interpret LRE to mean that districts must establish public programs for nondisabled children for sole purpose of implementing LRE during ESY
    - However, districts must meet LRE requirements by alternative means, such as private placements, if student must have interaction with nondisabled students to receive FAPE

(Letter to Myers (OSEP 1989) 213 IDELR 255)
ESY and LRE

- Application of LRE to ESY (California regulations)
  - If student’s IEP during regular year specifies integration in general ed classroom, districts that do not offer regular summer school programs are not required to meet that component of the IEP for ESY

(5 C.C.R. § 3043(g))
ESY Services

- **Practical LRE Lessons**
  - IEP team should make sure parents are aware that the district is not required to ensure availability of full continuum of placements solely for the purpose of providing ESY
  
  - Example: District, which did not offer regular summer school program, offered ESY placement in SDC instead of inclusion setting to Student with pervasive developmental disorder
    
    - ALJ found no violation; cited Letter to Myers that full continuum is not required and District did not have to create regular class
      
      (Student v. San Francisco Unified School District (OAH 2009))
Application of LRE to Students in Other Nontraditional Settings
Incarcerated Students

- IEP teams “may not routinely place all students with disabilities in correctional facilities in classes that include only students with disabilities, even if this means creating placement options or using other arrangements” (e.g., having special ed and general ed teachers co-teach in regular classroom)

- Exception: No LRE requirement for student convicted as adult and incarcerated in an adult prison if there is “bona fide security or compelling penological interest that cannot otherwise be accommodated”

(Dear Colleague Letter (OSEP/OSERS 2014) 64 IDELR 249; 34 C.F.R. § 300.324(d)(2))
Postsecondary Transition Services

- LRE also applies to all placement decisions related to providing postsecondary transition services.
- OSEP: “Segregated employment program may be appropriate work placement for particular student if determined to be appropriate by IEP team based on LRE requirements and specific individualized needs of student.”

(Letter to Spitzer-Resnick, Swedeen and Pugh (OSEP 2012) 59 IDELR 230)
Provision of Related Services

- Same LRE principle as providing special ed – services must, to the maximum extent appropriate, occur in a setting with students who are nondisabled
- Removal determined on unique needs
  - Example: Removal of Student to nurse’s office for tracheal suctioning failed to comply with LRE because procedure could be done in general ed classroom without disruption (Wyomissing Area School Dist. (SEA PA 2007))
  - Example: But transporting Student to hospital for 30 minutes of OT per week because District could not find therapist to deliver services on campus did not violate LRE since Student would not be adversely affected (Midland Independent School Dist. (SEA TX 1995))
Resources
Timely and Timeless Topics

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