All Things Considered

Serving Students with Intellectual Disabilities in the Least Restrictive Environment

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What We’ll Consider . . .

- Legal Framework
- Gen Ed Placement Does Not Have to Be Tried First
  - Case Example #1: Student v. El Centro ESD
- LRE Compliance Not Excused By Lack of Staffing
  - Case Example #2: Student v. Spencer Valley ESD
- Working Separately Is Not Meaningful Inclusion
  - Case Example #3: Student v. Clovis USD
- Better Program vs. “Satisfactorily Educated”
  - Case Example #4: Student v. Oakdale USD
- Other Cases, Other Issues Considered
Legal Framework
Intellectual Disabilities Generally

- Most common developmental disability
  - Comprises 7.3 percent of all children who need special education
  - In California, 43,750 students who received special education during the 2013-2014 school year were categorized with intellectual disability

- Refers to group of disorders

- Can result from variety of causes
“Rosa’s Law”

- 2010 Federal legislation
  - Substituted use of term “intellectual disability” in lieu of “mental retardation” and “individual with an intellectual disability” instead of “mentally retarded”
  - Applied to most federal health, education and labor statutes
    - IDEA
    - Section 504
IDEA Eligibility

- One of IDEA’s 13 disabling conditions
  - “Significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s educational performance”
    - IQ
    - Capability to function independently (i.e., adaptive behavior)

(34 C.F.R. § 300.8; Ed. Code, § 56026)
IDEA Eligibility (cont’d)

- Even if disability definition is satisfied, student must require special education in order to be found eligible

- “Special education”
  - Specially designed instruction
  - Provided at no cost to parents
  - Intended to meet “unique needs” of student

(34 C.F.R. § 300.39)
Least Restrictive Environment

In order for district’s offer of special education services to constitute FAPE, the offer of educational services and/or placement must be:

- Designed to meet student’s unique needs
- Comport with student’s IEP
- Be reasonably calculated to provide student with some educational benefit
- Be in the LRE

(34 C.F.R. § 300.39)
The LRE Mandate

- To the maximum extent appropriate, students with disabilities should be educated with nondisabled students; and

- Special classes, separate schooling or other removal of children with disabilities from general educational environment occurs only if nature or severity of disability is such that education in regular classes with use of supplementary aids and services cannot be achieved satisfactorily

(34 C.F.R. § 300.114; Ed. Code, § 56031)
LRE (cont’d)

LRE Terminology Review

- “Full inclusion”: Placement full-time in general education classroom with supplementary aids and services (which can include one-to-one aide)

- “Mainstreaming”: Placement in special education setting with part-time participation in general education classroom with academic and/or nonacademic support services
LRE (cont’d)

- 9th Circuit: Rachel H. four-factor balancing test:
  - 1. Educational benefits of general education with supplemental aids/services
  - 2. Non-academic benefits of general education classroom
  - 3. Effect of student’s presence on others in general education classroom
  - 4. Cost of providing instruction/services in general education classroom (rarely litigated)

(Sacramento City Unified School District v. Rachel H. (9th Cir. 1994) 14 F.3d 1398, 20 IDELR 812)
LRE (cont’d)

- 9th Circuit has also held that general education placement cannot be LRE for every student with a disability
  - “In some cases, such as where the child’s [disability] is particularly severe, it will be impossible to provide any meaningful education to the student in a mainstream environment”
  - IDEA’s mandate for FAPE “qualifies and limits its mandate for education in the regular classroom”

(Poolaw v. Bishop (9th Cir. 1995) 67 F.3d 830, 23 IDELR 406)
Case Example #1:

**Student v. El Centro Elementary School District (OAH 2013)**
Case #1: Student v. El Centro ESD

- **Sum and Substance:**
  - “The IDEA's preference for mainstreaming is not an absolute commandment”
  - Law does not require districts to first attempt placement in general classroom and only then offer more restrictive placement if student fails to progress
Case #1: Student v. El Centro ESD

Facts

- 2009: Parents revoked consent for special education services for preschool-age Student with Down syndrome
- 2010: Parents requested assessment for new eligibility determination
- 2011-2012: District offered placement in SDC for kindergarten but Parents wanted dual immersion (English-Spanish) kindergarten classroom
  - District allowed enrollment in dual immersion class
- After school year began and Student was struggling in general ed classroom, District again offered SDC
  - Parents refused to consent to proposed IEP
Case #1: Student v. El Centro ESD

Facts (cont’d)

- 2012-2013: Student enrolled in dual immersion kindergarten for second year
- IEP team continued to believe general ed classroom was inappropriate based on Student’s cognitive level/behavior issues and offered SDC placement (165 minutes) and 135 minutes in gen ed kindergarten

Both parties filed for due process

- Parents contended District’s offer of placement was not LRE and claimed District should have first offered full inclusion placement with supports
- District sought to implement 2012-2013 IEP notwithstanding Parents’ refusal to consent
Case #1: Student v. El Centro ESD

- **Decision:** District prevailed
  - ALJ agreed that Student was not able to function in general ed environment (dual immersion classroom)
    - Easily distractible and disrupted other children
  - ALJ rejected argument that Rachel H. required IEP team to first offer full inclusion and only offer SDC if Student failed to progress
    - Parents’ argument was misreading of law (ALJ cited to Poolaw v. Bishop)
    - Student had opportunities in general ed classroom and did not succeed (even though he was not placed there by IEP team)
Case #1: Student v. El Centro ESD

Decision (cont’d)

- Both 2011-2012 and 2012-2013 proposed placements would have offered FAPE
- Student did not progress toward goals despite repeating his kindergarten year
- Continued to engage in constant disruptive behaviors that interfered with classroom instruction
- Student’s newly acquired readiness skills made part-time placement in general ed appropriate for 2012-2013

(Student v. El Centro Elem. School Dist. (OAH 2013) Case Nos. 2012100380 and 2012080113, 113 LRP 23857)
Case Example #2:

Student v. Spencer Valley Elementary School District (OAH 2014)
Case #2: Student v. Spencer Valley ESD

- **Sum and Substance:**
  - “Lack of adequate personnel or resources cannot be used as an excuse by a school district to relieve it of its obligation to make a FAPE available to [students with disabilities] in their least restrictive environments”
Case #2: Student v. Spencer Valley ESD

Facts:
- Student with Down syndrome (IQ of 67)
- Parents moved to District in 2012
  - District consisted of only one school and two classrooms
- IEP team offered “hybrid” placement of one-half day in District school and remaining half-day in special ed classroom in neighboring district
- Parents rejected IEP and returned Student to charter school where he had previously attended
  - Parents disputed charter school’s offered placement and prevailed in due process, then returned Student to District
Case #2: Student v. Spencer Valley ESD

- **Facts (cont’d)**
  - **May 2013**: IEP team meeting offered full inclusion placement for 2013-2014 (fourth grade), with full-time aide support, accommodations and modifications
    - Contracted with neighboring district for special ed consultation and also contracted with outside service providers
  - **October 2013**: IEP team acknowledged that District had been unable to maintain consistent staffing to support Student’s IEP
    - Team believed Student’s progress on goals was illusory because he was not achieving results independent of his aide
    - Offered specialized instruction (40 percent of school day) at another district located 40 minutes away
Case #2: **Student v. Spencer Valley ESD**

- **Decision:** Parents prevailed
  - Rachel H. factors supported continued placement in general ed classroom
    - Student made good progress on academic goals (none of which required accomplishment without aide support)
    - Interacted well with peers
    - Behaviors had improved (no longer kicking, biting or swinging a shovel)
  - Parents’ expert witnesses persuasively testified how general ed curriculum could be modified to ensure Student’s full participation
Case #2: Student v. Spencer Valley ESD

Decision (cont’d)

- ALJ stated that rather than Student’s lack of progress, District’s decision to offer more restrictive placement in October 2013 was due to difficulty finding and retaining staff to implement Student’s IEP and lack of available support for general ed teacher
- Neither reason was appropriate for determining LRE
  - ALJ cited OSEP Letter to Trigg
  - IEP team first should have decided LRE and then determined how to implement Student’s IEP in that setting

(Student v. Spencer Valley Elem. School Dist. (OAH 2014) Case Nos. 20140308242 and 2014030046, 114 LRP 38665)
Case Example #3:

**Student v. Clovis Unified School District (OAH 2013)**
Case #3: Student v. Clovis USD

- **Sum and Substance:**
  - “If, in general education academic classes, a student . . . would have to work separately from the rest of the class to access his education, [then] this is not meaningful inclusion”
Case #3: Student v. Clovis USD

Facts:

- 2011-2012: District offered 54 percent SDC and 46 percent general ed placement for sixth-grade Student with Down syndrome
  - Parents only consented to general ed (afternoon) classes; Student did not attend SDC for morning session
  - Parents supplemented Student’s school day with private tutor
- April 2012: For seventh grade, IEP team offered placement of 43 percent in SDC and 57 percent in general ed (art, drama PE and lunch) based on determination that Student continued to require specially designed instruction due to his cognitive delays
Case #3: Student v. Clovis USD

Facts (cont’d)

- Parents again disagreed with SDC placement offer, believing that District failed to implement modified curriculum so that Student’s unique needs could be met by full inclusion.
- District believed seventh grade core academic subjects could not be modified to extent Student needed in order to participate.
  - Assessments indicated Student demonstrated considerable delays in overall reading, written language and math skills.
  - Functioned at first-grade level for reading and math.
Case #3: Student v. Clovis USD

- Decision: District prevailed
  - District would not be able to modify general ed seventh grade core curriculum to level at which Student could obtain educational benefit
  - Modifications in core classes would need to be so extensive that Student would no longer be part of his class
    - “Student and his aide would have to work separately from the rest of the class to access his education and this is not meaningful inclusion”
    - For example, Student would not be able to understand abstract concepts that seventh-graders learned in pre-algebra
Case #3: Student v. Clovis USD

**Decision (cont’d):**

- Even modifications for general ed drama and art classes were very extensive (e.g., Student received “A” grades in drama so that he would feel successful)
- Student’s academic, social and language deficits and his behaviors would be disruptive in full-time general ed
  - Student “shut down” when faced with difficult lessons
  - But he received social benefits from inclusion in with general ed peers in drama, art, lunch and recess
- District’s SDC for core classes provided smaller, structured setting that Student required

(Student v. Clovis Unified School Dist. (OAH 2013) Case No. 2012110503, 114 LRP 23865)
Case Example #4:

**Student v. Oakdale Joint Unified School District (OAH 2012)**
Case #4: Student v. Oakdale JUSD

- **Sum and Substance:**
  - “While a district may believe [a more restrictive setting] may be a ‘better program’ for the student, the issue . . . is whether [the student] can be satisfactorily educated in a general education setting”
Case #4: Student v. Oakdale JUSD

Facts:

- Student with Down syndrome transferred to District from Texas before beginning of 2010-2011 school year
  - Had attended Texas public school “Early Learning Center” to prepare for kindergarten and also was enrolled in private “early general education school” where she apparently was successful and participated in dance classes and gymnastics
  - Parents provided information about Texas placements to District
- District provided interim placement in moderate-to-severe SDC, consistent with placement set forth in Early Learning Center’s IEP
Case #4: Student v. Oakdale JUSD

- **Facts (cont’d):**
  - September 2011: IEP team recommended SDC for 95 percent of school day with 5 percent inclusion for recess, assemblies and field trips
  - Parents believed SDC was not LRE
    - Observed class and did not like environment
    - Parents believed Student reacted negatively and no longer wanted to go to school
  - Parents removed Student from District and placed her in private school
  - Filed for due process seeking reimbursement
Case #4: Student v. Oakdale JUSD

**Decision: Parents prevailed**

- IEP team accepted Early Learning Center placement when designing offer of FAPE without seriously considering whether Student was capable of receiving benefit in general ed setting
- District was aware Student received nonacademic benefits at private general ed preschool
- District’s failure to consider this information when developing IEP denied FAPE because “it resulted in offer that provided nothing more than nominal opportunities for Student to be educated with typically developing peers”
Case #4: Student v. Oakdale JUSD

Decision (cont’d):

- ALJ: Although District believed SDC was “better program” for Student, central issue was whether she could be successfully educated in general ed classroom

- Information available to District indicated Student could benefit from placement in general ed setting
  - ALJ also noted Early Learning Center’s IEP acknowledged that SDC could be ultimately be detrimental when compared to placement with typically developing peers

- Parents awarded costs of placement and reimbursement at private school

(Student v. Oakdale Joint Unified School Dist. (OAH 2012) Case No. 2011120409, 112 LRP 24573)
Other Cases, Other Issues Considered
Student v. Santa Clara USD

**Sum and Substance:**

- Student’s ability to access his or her education in general education setting previously at younger age should not be a determinative factor when making current offer of placement.
Student v. Santa Clara USD

Case Summary:

- 12-year-old Student offered placement in moderate-to-severe SDC for middle school
- Parents claimed Student succeeded in general ed full inclusion during fourth and fifth grades
- ALJ found for District
- “That Student was able to access his education in a general education setting when he was younger is not at issue”
- Student was no longer able to keep up academically with general ed peers or participate with them (even with aide)
- Student also no longer socialized with peers

(Student v. Santa Clara Unified School Dist. (OAH 2012) Case Nos. 2012060055 and 2012050564, 112 LRP 57715)
Student v. San Lorenzo USD

- **Sum and Substance:**
  - Academic rigors of general education classes can limit opportunities for social interaction
Student v. San Lorenzo USD

Case Summary:

- 13-year-old Student placed in SDC for science and social studies classes in middle school.
- Parents claimed placement was not LRE because Student benefitted from previous general ed placement for those classes in fifth and sixth grades.
- ALJ upheld District’s placement.
- Due to academic rigors and demands of those classes in seventh and eighth grades, limited opportunities existed in the classroom for social interactions or other mainstreaming activities.
- Student needed SDC to make progress on his goals.

(Student v. San Lorenzo Unified School Dist. (OAH 2013) Case No. 2013040589, 113 LRP 40302)
Castro Valley USD v. Student

- **Sum and Substance:**
  - Successful interaction with peers is important factor in mainstreaming decisions, even if academic benefit may be uncertain due to severity of student’s disabilities.
Case Summary:

- Fifth-grade Student with intellectual disability, blindness and cerebral palsy required classroom that could facilitate extensive support from several providers
- District offered moderate-to-severe SDC with some limited mainstreaming (Student would be read to by gen ed peers, attended choir practices)
- ALJ allowed District to implement program absent Parents’ consent
- Although Student would not make academic gains from mainstreaming opportunities, he enjoyed them and would benefit from exercising social skills

(Castro Valley Unified School Dist. v. Student (OAH 2010) Case No. 2010050546, 110 LRP 44419)
Sum and Substance:

Meaning of “benefit” in IDEA’s FAPE definition requires that students obtain benefit from a particular setting, not simply in a particular setting.
Case Summary:

- District offered placement in self-contained SDC for kindergarten Student, but Parents believed Student could succeed in general ed class with modified curriculum and one-to-one aide
- ALJ found for District
- Because Student’s vocabulary was no more than 15 words and his attention span no more than three seconds, he would be overwhelmed by general ed kindergarten
- Student would be segregated with aide and require entirely separate academic program from other students

(Student v. Rosedale Union Elem. School Dist. (OAH 2010) Case No. 2010020271, 110 LRP 37643)
Student v. Murrieta Valley USD

- **Sum and Substance:**
  - Functional, rather than academic, curriculum may be LRE for young students with significant intellectual disabilities.
Student v. Murrieta Valley USD

Case Summary:

- District proposed placing Student with Down syndrome in “severe” SDC for kindergarten
- Parents believed “mild-to-moderate” SDC was LRE
- ALJ found for District
- Student’s needs were so great that he would be isolated from other students in mild-to-moderate SDC, even with one-to-one aide
- Severe SDC designed to meet Student’s unique needs because classroom instruction was functional rather than academic with emphasis on developing functional skills

(Student v. Murrieta Valley Unified School Dist. (OAH 2008) Case No. 2008080110, 108 LRP 60085)
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