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Academic Benefit Least Restrictive Environment Factor Means Progress on IEP Goals

The Ninth Circuit Court of Appeals has changed the landscape of what constitutes the least restrictive environment (“LRE”) for students with individualized education programs (“IEPs”) by ruling that a student receives satisfactory academic benefit in a regular education classroom when the student makes progress on academic IEP goals even though a heavily-modified curriculum and the support of a one-to-one aide result in minimal academic participation with typical peers. (*D.R. v. Redondo Beach Unified Sch. Dist.*, 56 F.4th 636 (9th Cir. 2022).)

Existing law requires that students with disabilities are educated in the LRE, which means with their typical peers to the maximum extent appropriate. In addition, students with disabilities shall be removed from the regular classroom only when the nature or severity of the disability prevents the student from being satisfactorily educated even with the use of supplementary aids and services. In analyzing whether a regular classroom is the LRE, an IEP team must determine that the student is making enough academic progress that his education is being achieved satisfactorily even if another setting would be academically superior. Other relevant factors in the LRE analysis are non-academic benefits (e.g., social and communication) the student receives from the regular classroom, potential negative effects the student’s presence may have on the other students in the classroom (e.g., whether the student has disruptive behaviors or needs an unreasonable amount of the teacher’s time to the detriment of other students), and the cost of educating the student in the regular classroom.

In the *Redondo Beach* case, the student was placed in a regular classroom with a one-to-one aide for 75% of the day and spent the remainder of the day in a special education classroom. Using heavily-modified curriculum and with one-to-one aide support, the student met four of his six academic IEP goals and made progress on the other two. Nevertheless, the District believed the student would receive more academic benefit if his time in the special education setting was increased, and proposed a blended placement of 56% of the day in regular education with aide support, and 44% of the day in special education. The parents contended that the student was being satisfactorily educated by spending most of his day in the regular education class and filed for due process.

RECOMMENDATIONS FOR IEP TEAMS

1. IEP teams should continue to make individualized decisions about a student’s placement based on the student’s needs and goals.
2. Although IEP teams must continue to consider the four *Rachel H.* factors when making placement decisions, IEP teams now need to consider that even if a student has minimal academic participation in a regular education class due to heavily-modified curriculum and the support of a one-to-one aide, regular education nevertheless may be the LRE.

The administrative law judge (“ALJ”) ruled that the District’s proposed placement did not violate the IDEA, so the parents appealed to federal District Court. The District Court agreed with the ALJ that the student’s heavily-modified curriculum and need to spend most of his time working with his aide resulted in minimal academic participation. The District Court observed that the student “was effectively on an island in general education for academic purposes,” so spending most of his day in regular education was not the LRE. The District Court also agreed with the ALJ that the student’s success on his IEP goals did not result from inclusion in the regular education classroom, but from working on the heavily-modified curriculum with his aide and with the time spent in the special education setting.

The Ninth Circuit Court of Appeals reversed, ruling that the District’s proposed blended placement was not the LRE because the student was being educated “satisfactorily” in the regular education classroom. The Ninth Circuit explained that for students whose disabilities prevent them from performing at grade level, the proper measure of academic benefit under *Rachel H.* is whether the student makes progress toward academic IEP goals. This the student did. The District’s contention that the student could have made more academic progress in the special education setting did not outweigh the substantial non-academic benefits the student received in the regular classroom.

Key Take Aways

Based on the court’s analysis and holding, we believe that it is important for local educational agencies to keep in mind the following when considering whether a student’s placement complies with LRE requirements:

1. *The proper LRE measure of whether a student is receiving satisfactory academic benefit in a regular education class is the amount of progress the student makes on academic IEP goals.*
2. *Complying with LRE may mean that a student works several years below grade level on heavily-modified curriculum with an aide in a regular classroom.*
3. *A student who minimally participates in the academic portion of the regular class due to working on heavily-modified curriculum with an aide may be receiving academic benefit.*
4. *Increased time in special education that would enable the student to attain more academic achievement is not a factor in the LRE analysis.*

If you have any questions regarding this decision and how it affects your agency, please call any one of our six offices.

F3 NewsFlash® Written by:

Tiffany Santos, partner and Kathleen McDonald Anderson, associate

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