

# Educating Students with Disabilities in the Least Restrictive Environment



The 1997 Amendments to the Individuals with Disabilities Education Act (IDEA) and subsequent reauthorization of 2004 significantly strengthened the assurances states and school districts must make regarding the education of students with disabilities in the least restrictive environment (LRE). A student's LRE is the placement where a student can receive an appropriate education designed to meet his or her special education needs, while still being educated with nondisabled peers to the maximum extent appropriate. One option commonly referenced as "inclusion" affords students with disabilities greater opportunities to be educated in age-appropriate general education classes.

Although the IDEA presumes that most students with disabilities can be educated in general education classes with necessary supports, the IDEA does not mandate that all students with disabilities be educated full-time in general education classes. According to data provided by the State Education Department, greater numbers of students with disabilities are learning in general education classrooms. As a result, Committees on Special Education must determine what support services should be provided to these students and their teachers to ensure their appropriate education in the least restrictive environment. General and special education teachers play a critical role in making these determinations.

The purpose of this Bulletin is to provide information on the requirements related to the provision of services to students with disabilities in the least restrictive environment. This document also provides information and guidance to local leaders and members in regard to the development and implementation of "inclusive schooling" models. Local leaders who have further questions regarding this topic should contact their Labor Relations Specialist or NYSUT Research and Educational Services.

A complementary resource to this publication is the NYSUT Fact Sheet on "The Continuum of Special Education Services for School Age Students with Disabilities." All referenced NYSUT Fact Sheets can be found at [www.nysut.org](http://www.nysut.org).

## TABLE OF CONTENTS

| <u>Topic</u>  | <u>Page</u> |
|---|-------------|
| • What is Least Restrictive Environment (LRE)? .....                                    | 3           |
| • LRE and the IDEA .....  | 4           |
| • New York State and LRE .....  | 5           |
| • NYSUT Policy Regarding LRE and Inclusion.....   | 6           |
| • What is “Inclusion” and What are Common Inclusion Models? .....                       | 7           |
| • Considerations in Determining a Student’s LRE? .....                                  | 9           |
| • What is the Role of General Education and Special Education Teachers?... 10           |             |
| • Enforcement of the LRE.....   | 10          |
| • Advice to Local Leaders Concerning the Implementation of an Inclusive Program. 11     |             |
| • Resources.....  | 13          |
| • Attachment A: Questions and Answers on the Least Restrictive Environment Requirements |             |

## WHAT IS LEAST RESTRICTIVE ENVIRONMENT (LRE)?

Since the Individuals with Disabilities Education Act (IDEA), originally titled the Education for all Handicapped Children Act, was passed in 1975, school districts have been required to provide students with disabilities with a free appropriate public education (FAPE) in the least restrictive environment (LRE) to the maximum extent appropriate.

As defined in Part 200 of the Regulations of the Commissioner of Education, the term “least restrictive environment” means:

*That placement of students with disabilities in special classes, separate schools or other removal from the regular educational environment occurs only when the nature or severity of the disability is such that even with the use of supplementary aids and services, education cannot be satisfactorily achieved. The placement of an individual student with a disability in the least restrictive environment shall:*

- (1) provide the special education needed by the student;*
- (2) provide for education of the student to the maximum extent appropriate to the needs of the student with other students who do not have disabilities; and*
- (3) be as close as possible to the student’s home.*

A student’s LRE is the setting where the student can receive an appropriate education, based on his or her unique needs, while still being educated with nondisabled peers to the maximum extent appropriate. Any setting that prevents a student from receiving an appropriate education to meet with his or her cognitive, social, physical, linguistic and/or communicative needs is not the LRE for that individual student.<sup>1</sup> The placement decision for an individual student must be made only after the individualized education program (IEP) is completely developed to address the full range of the student’s needs. Depending on the student’s educational needs, the LRE could be, for example: the general education classroom, with or without supplementary aids and services; a separate special education program for part of the day with the remainder of the day being spent in general education classes or in activities with students who do not have disabilities; a special education class within the student’s child’s neighborhood school; or even a separate school specializing in the needs of a certain type of disability.

A critical consideration in deciding whether or not the student will be educated within the general education classroom is the possible range of supplementary aids and services and/or other special education services that are needed to ensure that the student can be satisfactorily educated in that environment. If the Committee on Special Education (CSE) determines that the student can be educated satisfactorily in the general education classroom, that placement is the LRE for the student. This determination must be based on the individual needs of the student.

However, the CSE may determine that the student cannot be educated satisfactorily in the general education classroom, even when supplementary aids and services are provided. An

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<sup>1</sup> *The Least Restrictive Environment Implementation Policy Paper, approved by NYS Board of Regents, May 1994; updated May 1998.*

alternative placement must then be considered. Accordingly, schools have been, and still are, required by federal and state laws to ensure that “a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services” [34 CFR §300.551(a)]. This continuum includes a range of alternative placements such as instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions [8 NYCRR § 200.6]. See the [NYSUT Fact Sheet on “The Continuum of Special Education Services for School Age Students”](#) for more information.

## LRE AND THE IDEA

The emphasis on LRE has been strengthened under the IDEA. These changes have been incorporated into New York State Education laws and regulations regarding the education of students with disabilities.

- **The content of the IEP** emphasizes the participation of students with disabilities in the general curriculum. IEP goals must be written with this participation in mind. The IEP must include an explanation of the extent to which the student will not be participating with nondisabled children in the general education classroom and in nonacademic and extracurricular activities.
- **Supplementary aids and services** are defined in federal and state regulations. The term supplementary aids and services *means aids, services, and other supports that are provided in regular education classes, other education-related settings and in extra-curricular and non-academic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with LRE.* Often these aids and services must be provided to the student with a disability to enable the student to be educated in the general education classroom.
- Students with disabilities must be afforded **access to state and district-wide assessment programs**. For those students with disabilities whose participation is not appropriate for the statewide assessment program for all students, New York State developed an alternate way of assessing their progress - The New York State Alternate Assessment (NYSAA) for Students with Severe Disabilities. For more information see the [NYSUT Fact Sheet on “Alternate Assessments for Students with Significant Disabilities.”](#) Additionally, each student’s IEP must indicate the appropriate testing accommodations necessary for the student’s participation in state or district-wide assessments. If the CSE determines that the student cannot participate in such assessments, then the IEP must include a statement of (a) why the assessment is not appropriate for the student, and (b) how the student will be assessed. Testing accommodations are changes made in the administration of the test in order to remove obstacles to the test-taking process that are presented by the disability without changing, or modifying, the constructs being tested. When making decisions regarding appropriate testing accommodations for an individual student with a disability, it is important for the CSE to be familiar with the purpose and construct of the tests administered because certain accommodations may become modifications, depending on the purpose of the test. For more information on this topic, see the link to the New York State Education Department publication “Test Access & Accommodations for Students with Disabilities” in the Fact Sheet section on NYSUT’s webpage.

- Each school district receives federal IDEA funds on an annual basis. These funds may be used to pay for the costs of special education and related services and supplementary aids and services, provided in a general education class or other education-related setting to a student with a disability, in accordance with the IEP of the student, even if one or more students without disabilities benefit from the services. This is referred to as the **incidental benefit of providing special education** services to students in general education classes.

## NEW YORK STATE AND LRE

In May 1998, the updated *Least Restrictive Environment Implementation Policy Paper* was distributed by the State Education Department. This Policy Paper describes how school districts and the state are to implement federal and state requirements relative to the education of students with disabilities in the least restrictive environment. Consistent with this policy paper and the IDEA, New York State special education reform efforts, first initiated in 1995, establishes a state-wide goal to:

Assure that students with disabilities are educated in settings with their nondisabled peers to the maximum extent appropriate to their individual needs.

The New York State Education Department (SED) continues to monitor local school district efforts to educate students with disabilities in the LRE. According to SED data, school districts are reducing their reliance on separate site programs and providing students with disabilities greater access to general education.

## NYSUT'S POLICY REGARDING LRE AND INCLUSION

Currently, NYSUT has adopted the following policies:

As approved at the 1993 Representative Assembly and extended by the Board of Directors in 2001:

- NYSUT supports the concept of least restrictive environment and the continuum of alternative placements i.e., “instruction, in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions” as necessary and proper to meet the individual needs of disabled students. NYSUT supports the provisions of additional services to support at risk and mildly and moderately disabled students in appropriate general education programs, but not at the cost of dismantling the continuum of alternative placements.
- NYSUT believes that the educational needs of the general education student must be considered in the organization and operation of inclusion programs. Inclusion must not be allowed to work to the detriment of the general education student. Therefore, the decision to place a disabled student in a general education class should be based both on the judgment that such placement will be of educational benefit to the student with a disability and on the judgment that such placement will not have an adverse effect on the education of general education students.

- NYSUT does not support the use of the general education classroom as the only educational placement for all disabled students.
- NYSUT does not support the education of students with disabilities in the general education classroom if that placement is based on the cost saving considerations.
- NYSUT believes that the decisions regarding educational placement of students with disabilities must be made by those involved in the education of the student. In this regard, NYSUT supports changes in Commissioner's regulations which would require that, whenever a student is referred to a Committee on Special Education, or is subject to a review by a Committee on Special Education, that each of the student's teachers be provided notice of the meeting and given the opportunity to attend the meeting to discuss the student and the student's educational needs.
- NYSUT also supports changing Commissioner's Regulations to require that one general education teacher and one special education teacher be appointed as mandated members of Committees on Special Education. Such members should be appointed by the local teacher bargaining agent.

As approved at the 2004 Representative Assembly and extended by the Board of Directors in 2001:

- That NYSUT recommend to the Commissioner of Education and the Board of Regents that the placement of students with disabilities in regular education classroom, where appropriate, be simply one of the choices in the continuum of established delivery services.
- As approved at the 2007 Representative Assembly:
- That NYSUT seek legal and/or regulatory action to establish special education delivery models integrated in general education classes which includes an acceptable ratio of instructional staff to students and a ratio of students with disabilities to be served with their nondisabled peers that does not exceed the natural proportion to students with disabilities in the general school population, and be it further.
- That NYSUT urge the State Education Department to actively monitor the implementation of integrated special education delivery models in general education classes with applicable laws and regulations and ensure corrective action for compliance, when appropriate.

### **WHAT IS "INCLUSION" AND WHAT ARE COMMON INCLUSION MODELS?**

For a number of years, school districts have been engaged in the development and implementation of educational programs that afford students with disabilities increased opportunities to participate in general education classes for all or most of the school day. This approach is commonly referred to as "inclusion." Some educators, parents and advocates strongly believe that the least restrictive environment for all students is always full-time placement in the general education classroom. Some school districts have proceeded to put forth the false impression that inclusion is the "law of the land" and must be implemented.

As stated in the May 1998 *Least Restrictive Environment Implementation Policy Paper*, inclusion is an option within the continuum of alternate placements for students with disabilities. In the glossary of terms appended to the Policy Paper, inclusion is defined as:

*“one of several approaches for the provision of special education in a general education program. Under this approach, the primary instruction and provision of appropriate special education services to a student with a disability is provided in an age-appropriate general education class in his or her home school with appropriate additional supports for the student and the student’s teacher(s).”*

As previously stated, **inclusion is not a mandate for all students**. It is not defined in federal or state laws, and regulations. School districts are required to ensure that a continuum of alternative placements are available to meet the diverse needs of students with disabilities. According to a September 16, 1994 memorandum to the National Education Association, the U.S. Department of Education states that the required continuum of alternative placements “reinforces the importance of the individualized inquiry, not a ‘one size fits all’ approach in determining what placement is the LRE for each student with a disability.” The requirement for a continuum of alternative placements supports the fact that determining LRE must be done on an **individualized basis**, considering the student’s unique needs.

The following are common inclusion models:

### **Consultant Teacher Services**

This approach involves a certified special education teacher who provides direct and/or indirect services to students with disabilities who attend general education classes and/or to the student’s general education teachers. As defined in Part 200 of the Commissioner’s Regulations, each student must receive a minimum of two hours of consultant teacher services per week. A student requiring a combination of consultant teacher services and resource room services, a specialized supplementary instructional program, must receive such services at least three hours a week.

***Direct consultant teacher services*** means specially designed individualized or group instruction to a student with a disability to aid such student to benefit from the student’s general education classes.

***Indirect consultant teacher services*** means consultation provided by the special education teacher to general education teachers to assist them in adjusting the learning environment and/or modifying their instructional methods to meet the individual needs of a student with a disability who attends their classes.

As a consultant teacher, the special education teacher may be assigned to serve students with disabilities who attend several general education classrooms. The special education teacher provides, as an itinerant, direct and/or indirect services based on the IEP of the student. Other special education providers may also be assigned to the class at different times throughout the day in order to meet the related and support service needs of students with disabilities (e.g., a behavioral paraprofessional or sign language interpreter). In addition, based on the needs of the students included in the general education classes, the school district may assign a teaching assistant to such classes when the special education teacher is not in attendance. This teaching assistant provides direct instructional services, as specified in Part 80 of the Commissioner’s

Regulations, under the general supervision of a licensed or certified teacher. For more information, see the NYSUT Fact Sheet on "Consultant Teacher Services."

### **Integrated Co-Teaching Services**

"Integrated co-teaching services" were recently defined in the Part 200 Regulations to mean a general education teacher and a special education teacher jointly providing instruction to a class that includes both students with and students without disabilities to meet the diverse learning needs of all students in a class. The maximum number of students with disabilities that can be on the class roster of a class where integrated co-teaching services are provided is twelve (up to fourteen with variances). There is no regulatory maximum number of nondisabled students. A district is not required to provide integrated co-teaching services, however, if provided, the services must be consistent with regulation.

It is now required that all districts use the terminology "integrated co-teaching," consistent with the regulatory requirements, so that the level of services being provided to a student is clear and consistent among school districts. While other terms, such as blended or inclusion classes have been used by other school districts, the actual services provided varied among districts. To clarify for parents that a previously recommended service means the same as integrated co-teaching, terms such as blended class or inclusion class may also be indicated in the IEP.

While both direct consultant teacher and integrated co-teaching services are provided in a student's general education class, they differ in the manner and in some circumstances, in the extent to which, such supports are provided to the student.

Integrated co-teaching services means students are intentionally grouped together based on similarity of need for the purpose of receiving specially designed instruction in a general education class, usually daily for the identified class. In this model, a general education teacher and a special education teacher share responsibility for the delivery of primary instruction, planning and evaluation for all students. Depending on the special class option located in the general education classroom, a paraprofessional may also be assigned to the classroom. Based on the needs and abilities of the students with disabilities in this environment, these students may participate in the general education curriculum, a modified general education curriculum or a curriculum that is specially designed for students with disabilities assigned to this class. During the course of the school day and/or week, each teacher may have responsibility for providing primary instruction to the whole class. The other teacher and paraprofessional provide support to selected students. The general and special education teachers are collaboratively involved in planning and delivery of instruction for all students assigned to the classroom.

### **CONSIDERATIONS IN DETERMINING A STUDENT'S LRE**

The IDEA makes it clear that the CSE must consider a student's placement in the general education classroom is the first option. Generally, children with disabilities are educated in the same school and in the same classes that they would normally attend if they did not have a disability, unless the student's IEP cannot be implemented satisfactorily in that environment, even with the provision of supplementary aids and services.

Placement decisions must be individually determined on the basis of each student's abilities and needs, and not solely on factors such as category of disability, significance of disability,



availability of special education and related service, configuration of the service delivery system, availability of space or administrative convenience. Rather, each student's individualized education program (IEP) forms the basis for the placement decision. Further, a student need not fail in the general education 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 general education classroom.

The following are key quality indicators that Committee members should consider when determining the student's placement in the LRE:

- Is the placement based on the student's identified strengths and unique needs?
- Does the decision reflect consideration of whether the student could achieve any of his/her IEP goals in a general education class, including specials, with the use of supplementary aids and services?
- Does the decision reflect consideration of whether modifications to the curriculum could enable the student to meet any of his/her goals in general education classes?
- Does the decision reflect flexible consideration of all options of the continuum?
- If the student exhibits behavior that impedes his or her learning, does the decision reflect supports and strategies including positive behavioral interventions to address that behavior?
- Does the recommendation consider opportunities for the student to participate with students without disabilities in nonacademic and extracurricular activities?
- Does the recommendation consider potential harmful effects of removal from the general education setting or on the quality of services that the student needs?
- Does the recommendation consider proximity to the student's home?

### **WHAT IS THE ROLE OF GENERAL EDUCATION AND SPECIAL EDUCATION TEACHERS?**

General education and special education teachers play critical roles in assisting other members of the CSE in determining a student's eligibility for special education, developing an IEP, and in making decisions about the placement of students with disabilities in the LRE. These teachers also play significant roles in the implementation of the student's IEP. Their roles, especially the general education teacher have been greatly enhanced as a result of the IDEA that require school districts to ensure students with disabilities have greater access to the general education curriculum and to general education classes.

#### **Teachers as Decision Makers**

Each CSE must include at least one special education teacher of the student and at least one general education teacher of the student, if the student is or may be participating in the general education environment. These teachers must be in attendance at all CSE meetings that involve the development, review and revisions of the IEP unless formally excused by the parent and school district consistent with the IDEA reauthorization of 2004. For more information on the

excusal of CSE members, see the NYSUT Fact Sheet on the “Reauthorized IDEA of 2004 and State Law.”

At the CSE meeting, the general education teacher would assist the special education teacher and other members of the CSE in determining: (1) appropriate positive behavioral interventions and strategies for the student; and (2) supplementary aids and services, program modifications, supports for school personnel that will be provided for the student to attain the annual goals, to be involved in and progress in the general curriculum, and to be educated with nondisabled students. The general education teacher has important expertise regarding the general curriculum and the general education environment.

### **Teachers as Implementers of the IEP**

School districts must ensure that general education teachers, special education teachers, related service providers and other providers who are responsible for IEP implementation are provided with a paper or electronic copy of the IEP for each student with a disability in their classes or on their caseloads. This information must be provided prior to the implementation date of the IEP. In addition, consistent with federal regulation [(34 CFR 300.323 (d))] and state regulation [8 NYCRR 200.4 (e)(3)], each teacher must be informed of his or her responsibilities related to implementing the student’s IEP and the specific accommodations, modifications and supports that must be provided for the student according to the IEP. See the NYSUT Fact Sheet on “Copies of IEPs to Teachers and Other School Personnel” for additional information.

As general and special education teachers engage in collaborative efforts to implement the IEP of the students in their classes or assigned to their caseload, various discussion issues may arise. Teachers, administrators and local union leadership may need to address several of these issues collectively as they may affect terms and conditions of employment.

### **ENFORCEMENT OF THE LRE**

The State Education Department is responsible for ensuring that federal and state LRE requirements are implemented by each school district. As a result of data collection and monitoring activities, an Annual Performance Report is issued by the state detailing progress and/or slippage in meeting targeted performance in the provision of a free appropriate public education in the LRE.

The state must intervene where there is evidence that a school district is making placements that are inconsistent with the LRE requirements. In such cases, the state must review the school district’s justification for its actions and assist in planning and implementing any necessary corrective action. The State Education Department must undertake these monitoring and technical assistance activities in all situations where noncompliance with federal and state LRE requirements is identified.

In situations where noncompliance with LRE requirements is identified, school districts will be required to develop corrective action plans with associated timelines to resolve the compliance issues, which will be subject to Department approval. The Department could also take additional action, as necessary, including withholding of federal funds, when adequate progress toward compliance is not being achieved.

If a local collective bargaining unit becomes aware of violations of federal and state LRE requirements through its members, the local president, on behalf of his/her members, could file a written complaint with the State Education Department. Prior to submitting the complaint, local presidents should consult with their Labor Relations Specialist. *An individual teacher should not unilaterally file a letter of complaint.*

The written complaint includes a statement alleging that the school district or BOCES has violated a federal or state law or regulation relating to the education of students with disabilities. The State Education Department must issue a decision within 60 calendar days of receipt of the complaint except where unusual circumstances exist with respect to a particular complaint. Information on the formal complaint process and a sample complaint form can be found at <http://www.p12.nysed.gov/specialed/publications/policy/covercomplaint.htm>

### **ADVICE TO LOCAL LEADERS CONCERNING THE IMPLEMENTATION OF AN INCLUSIVE PROGRAM**

Local leaders should consider the potential impact of consultant teachers and integrated co-teaching programs on all aspects of the school organization, culture and structure. The implementation of this program requires a change in the special education delivery system and the roles and responsibilities of general and special education teachers, paraprofessionals, related services providers and administrators. Teachers may be collaborative team members, curriculum developers and modifiers, participants in daily instructional decision-making, instructional leaders, and student advocates.

Curriculum and instructional problems may arise for both students with or without disabilities. Parental concerns as well as those of fellow teachers and other school employees should be addressed openly and honestly. The traditional organizational structure of schools, based on instruction provided in separate stand-alone classrooms with limited interaction between special education and general education teachers, paraprofessionals and administrators, is often not compatible with the delivery of special services in the general education classroom.

For those locals where school districts or schools are increasing learning opportunities in general classes, NYSUT recommends that:

- Meeting the individual educational needs of students with disabilities must be the primary goal. The issue of appropriateness of the educational placement is the key consideration; each student participating in an inclusion program must be capable of achieving his or her IEP goals in the general education setting.
- The bargaining agent(s) representing employees responsible for providing educational services to students should be involved in any initial and subsequent discussions the district may have concerning the development, implementation and expansion of inclusion programs in the district. All aspects of the program that impact terms and conditions of employment should be bargained. The participation of a teacher should be voluntary. (However, as these programs expand in a school building, teachers may have limited ability to volunteer).
- Successful programs require ongoing, high-quality professional development and training for all staff, including teachers, paraprofessionals, and administrators prior to the initiation of the program. In addition, professional development must become an ongoing element of such programs. Teachers should be involved in developing professional development plans

consistent with the requirements of Section 100.2 (dd) of the Regulations. At the same time, orientation of general education students and their parents to the purposes, goals, and methods of an inclusion program must be provided prior to the initiation of the program.

- Teachers and schools must be empowered to restructure their workday in order to have time to collaboratively plan instructional lessons and programs in order to meet the needs of all students in the classroom. Time for consultation between general education and special education teachers, paraprofessionals and service providers must be built into the school day schedule.
- Not all students with disabilities will benefit from instruction in general education classrooms. During the course of the school year, some students with behavior or academic problems may not be benefiting from their education, even with the supplemental aids and services and special education programs provided to them in their general classes. Teachers must feel comfortable in freely exercising their right to refer a student with a disability to a CSE at any time for a review or reevaluation when teachers believe that the current program or placement is inappropriate.
- When integrating students with disabilities in general education classrooms, those with lower class size limits are more effective than traditional larger classrooms. The total number of students in a classroom that includes students with and without disabilities should be reduced to minimize the diverse range of student needs.
- Questions regarding student expectations and student assessment, as well as teacher responsibility for grading, modification of materials, methods of instruction, and other pedagogical issues, including appropriate supervision, must be addressed and agreed to by all involved prior to the integration of students with disabilities in general classes. These issues should be discussed at meetings of the CSE and indicated where appropriate in the student's IEP.
- Monitoring and evaluation of these programs must be ongoing. The evaluation should include an assessment of the effects of the program on general education students, as well as the effects of the program on students with disabilities.
- Local leaders are urged to secure a copy of their district's "Plan for Special Education," which is required by Section 200.2 (c) of the Commissioner's Regulations. This plan describes the types of programs and services that are available within a district to meet the needs of disabled students. The plan may provide information and/or direction to local leaders in terms of the district activities to provide more age-appropriate integrated opportunities for students with disabilities.
- Local leaders, in collaboration with school administrators and teachers, should involve paraprofessionals and parents of children with and without disabilities in the planning and conducting of training activities and information sessions to prepare all stakeholders for an inclusive schooling model.

## RESOURCES

- NYSUT's Education and Learning Trust (ELT)

The ELT offers courses for undergraduate, graduate and in-service credit, partnership programs that lead to master's degrees and teacher certificates, and workshops and professional development programs for teachers and school related professionals. There are a number of special education offerings provided by the ELT that address inclusion, behavior management and other instructional issues involving students with disabilities. Visit [www.nysut.org](http://www.nysut.org) for more information.

- **Web-Based Information**

For information to support the successful implementation of integrated co-teaching services, you may want to review information that can be found at the following web sites:

[www.k8accesscenter.org/index.php](http://www.k8accesscenter.org/index.php)

[www.ped.state.nm.us/seo/library/qtrly.0404.coteaching.lcook.pdf](http://www.ped.state.nm.us/seo/library/qtrly.0404.coteaching.lcook.pdf)

These web sites are two of many that identify the research that supports integrating co-teaching and provides practical information on the various ways in which integrated co-teaching may be provided and provides professional development modules for teachers and supervisors regarding this service.

Questions and Answers on the Least Restrictive Environment Requirements  
(Excerpts from US DOE and SED Policy and Guidance Documents.)

1. Does IDEA define the term "inclusion"?

IDEA does not use the term "inclusion;" consequently, the United States Department of Education has not defined that term. However, IDEA does require school districts to place students in the LRE. LRE means that, to the maximum extent appropriate, school districts must educate students with disabilities in the regular classroom<sup>2</sup> with appropriate aids and supports, referred to as "supplementary aids and services," along with their nondisabled peers in the school they would attend if not disabled, unless a student's IEP requires some other arrangement. This requires an individualized inquiry into the unique educational needs of each disabled student in determining the possible range of aids and supports that are needed to facilitate the student's placement in the regular educational environment before a more restrictive placement is considered.

In implementing IDEA's LRE provisions, the regular classroom in the school the student would attend if not disabled is the first placement option considered for each disabled student before a more restrictive placement is considered. If the IEP of a student with a disability can be implemented satisfactorily with the provision of supplementary aids and services in the regular classroom in the school the student would attend if not disabled, that placement is the LRE placement for that student. However, if the student's IEP cannot be implemented satisfactorily in that environment, even with the provision of supplementary aids and services, the regular classroom in the school the student would attend if not disabled is not the LRE placement for that student.

2. Can school districts refuse to implement the student's IEP in a specific general education class because a teacher is unwilling to educate that student in his or her classroom or the teacher's assertion that he or she lacks adequate training to educate that student effectively?

Under IDEA, lack of adequate personnel or resources does not relieve school districts of their obligations to make a free and appropriate public education (FAPE) available to each disabled student in the least restrictive educational setting in which his or her IEP can be implemented. Exclusion of a student from an appropriate placement based solely on the student's disability is prohibited by Section 504 of the Rehabilitation Act of 1973. However, placement in a particular general education class based on the qualifications of the particular teacher is permissible under both statutes. The school district has an affirmative responsibility to ensure the supply of sufficient numbers of teachers who are qualified, with needed aids and supports, to provide services to students with disabilities in regular educational environments, and to provide necessary training and support services to students with disabilities.

3. Once a determination is made that a student with a disability cannot be educated satisfactorily in the regular educational environment, even with the provision of supplementary aids and services, what considerations govern placement?

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<sup>2</sup> The United States Department of Education uses the term "regular education" instead of general education.

IDEA does not require that every student with a disability be placed in the regular classroom regardless of individual abilities and needs. This recognition that regular class placement may not be appropriate for every student with a disability is reflected in the requirement that school districts make available a range of placement options, known as a continuum of alternative placements, to meet the unique educational needs of students with disabilities. This requirement for the continuum reinforces the importance of the individualized inquiry, not a "one size fits all" approach, in determining what placement is the LRE for each student with a disability. The options on this continuum must include the alternative placements listed in § 300.115 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions). These options must be available to the extent necessary to implement the IEP of each student with a disability. The Committee on Special Education (CSE) must select the option on the continuum in which it determines that the student's IEP can be implemented. Any alternative placement selected for the student outside of the regular educational environment must maximize opportunities for the student to interact with nondisabled peers, to the extent appropriate to the needs of the student.

It also should be noted that under IDEA, parents must be given written prior notice that meets the requirements of §300.503 a reasonable time before a public agency implements a proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. Consistent with this notice requirement, parents of students with disabilities must be informed that the school district is required to have a full continuum of placement options, as well as the placement options that were actually considered and the reasons why those options were rejected.

**4. To what extent is it permissible under IDEA for school districts to consider the impact of a regular classroom placement on those students in the classroom who do not have a disability?**

IDEA regulations provide that, in selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that the student needs. If a student with a disability has behavioral problems that are so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the disabled student cannot be met in that environment. However, before making such a determination, school districts 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 educational environment to accommodate the unique needs of the disabled student. If the CSE determines that even with the provision of supplementary aids and services, that student's IEP could not be implemented satisfactorily in the regular educational environment, that placement would not be the LRE placement for that student at the particular time, because her or his unique educational needs could not be met in that setting.

**5. Are professional development opportunities for educators, planning/release time for educators funding all or part of the salary of an additional classroom aide permissible uses of IDEA funds?**

In general, the expenditures listed above could be permissible expenditures of IDEA funds if the school district responsible for the student's education determines that they would be necessary for students to receive a free appropriate public education, or, if all eligible

children are receiving a free appropriate public education, to meet other requirements of IDEA. In all instances, the expenditures must be reasonable for the proper and efficient administration of IDEA, and must be expended with the cost principles applicable to the IDEA program. The expenditures must be included in the school district's application for IDEA funds submitted to and approved by the state educational agency.

**6. What can a teacher do if he or she feels the child's placement is no longer appropriate?**

Each student's placement, among other factors, must be determined at least annually and must be based on the student's IEP. Since each student's IEP must be based on the student's unique educational needs, it is the student's IEP that forms the basis for the placement decision. However, a student's IEP cannot be revised without holding another IEP meeting, which the school district is responsible for convening. If a teacher wishes to initiate review of the student's IEP at a point during the school year that does not correspond with the annual IEP review, that individual can request the CSE to hold another IEP meeting. Similarly, parents of a student with a disability have the right to request an IEP meeting at any time. If the CSE determines that revisions in the IEP should be made, the changes must be reflected in the revised IEP.

**7. Under what circumstances, if any, would the placement of large numbers of students with disabilities in a regular classroom constitute a violation of federal law?**

If students with disabilities are placed in the general education classroom, based on impermissible factors (category of disability, the configuration of the delivery system, the availability of services, administrative convenience) rather than on the basis of each student's abilities and needs as reflected in the student's IEP, such placements would violate federal law. Similarly, placing students with disabilities in the general education classroom, without providing them with necessary aids and supports, as reflected in their IEPs, would violate Federal law. If a school district proposes to place a student in a general education classroom in the school the student would attend if not disabled, but the student's IEP could not be implemented, even with appropriate aids and supports, such a placement would violate federal law.

In general, the proportion of students with disabilities in a particular general education classroom should be reflective of the natural distribution of students with disabilities in the population (i.e., 10 percent – 15 percent). However, there are situations where the numbers may appropriately exceed this amount based on the similarity of the needs of the enrolled students and/or when a student with a disability is enrolled in a particular education classroom where he or she does not require any special education services.

**8. How does a teacher ensure that needed services are included in a student's IEP? What can a teacher do if she or he is told not to include specific services in the IEP, which the teacher believes are necessary for the child?**

IDEA contemplates that decisions made at IEP meetings are team decisions. Therefore, there is no one person on the CSE who has the ultimate authority to dictate the services that an individual student receives. One reason for the participation of the agency representative, the individual with authority to commit agency resources, is to ensure that the agency will provide the services that the IEP team determines that the student needs. If a teacher who is



a participant on the student's IEP team believes that particular services are appropriate for a student, the teacher should recommend those services during the IEP meeting, which includes the child's parents, for consideration. Once the IEP team makes a decision as to the instruction and services that student needs, the school district responsible for providing education to the student must implement the student's IEP developed at the IEP meeting. If "a school district [was] to direct teachers or other CSE members to not include programs and services in the IEP, which are needed by the child," the school district would be failing to comply with IDEA.

**9. What rights does a teacher have under the federal law to file a minority report or dissenting opinion with respect to an educational decision with which she or he disagrees?**

There is no provision in federal law for an educator to file a minority report or dissenting opinion in connection with an educational decision with which she or he disagrees. Any decision made at an IEP meeting should represent the consensus decision of the CSE, including the child's parents. Under IDEA, parents and public educational agencies have the right to initiate an impartial due process hearing on matters regarding the identification, evaluation, educational placement, or the provision of a free appropriate public education to a child, including educational decisions resulting from IEP meetings. Therefore, if the parents agree with the concerns expressed by the educator and disagree with their child's IEP, the parents may choose to request mediation or to initiate a due process hearing. Similarly, if the school district believes that the IEP team's decision did not properly reflect the needs of the student, the school district could also initiate such a hearing.

**10. Can students with disabilities who require different IEP services at the same time be placed in the same general education classroom that has only one special education teacher assigned? As an example, one student's IEP calls for direct consultant teacher services in English, while other students' IEPs call for special class in English.**

No. A special education teacher can provide full-time instruction in English to students whose IEPs require it, or direct service to the one student as a consultant teacher, but cannot do both at the same time.

**11. What does LRE mean and how does it relate to the continuum of service options?**

LRE refers to the extent special education services are provided to a student in a setting with the student's nondisabled peers and as close to the student's home as possible. The continuum of services identifies different service delivery models to provide specially designed instruction to a student with a disability. Some of the services such as consultant teacher and integrated co-teaching services are directly designed to support the student in his/her general education class. Others may or may not be provided in settings with nondisabled peers, depending on the needs of the student. This is why the documentation of "location" in the IEP is important. The continuum of placement options is also directly related to LRE placement decisions.

**12. What factors should be considered when determining whether to recommend integrated co-teaching services for a student with a disability?**

The determination of whether integrated co-teaching services are an appropriate recommendation for an individual student with a disability must be made on an individual

basis. For some students, integrated co-teaching would be an alternative to placement in a special class with the added benefit of having both a special education and a general education teacher deliver the curriculum to the student. For each student, whether the general education classroom is the least restrictive environment for the student to receive his or her special education services should be made in consideration of, but not limited to the following factors:

- the classes in which integrated co-teaching is offered and the match to the students needs;
- the extent of special education services the individual student needs to access, participate and progress in the general education curriculum;
- the similarity of needs of the other students with disabilities in the class;
- the potential effect of the class size on the student's learning needs;
- any potential benefits and harmful effects such services might have for the student or on the quality of services that he or she needs; and
- whether the extent of the environmental modifications or adaptations and the human or material resources needed for the student will consistently detract from the opportunities of other students in the group to benefit from instruction.

A CSE must consider integrated co-teaching services only to the extent such services are available consistent with the district's plan for special education services.

**13. May school districts continue to use other terms to identify integrated co-teaching services in a student's IEP?**

No. It is now required that all districts use the terminology "integrated co-teaching," consistent with the regulatory requirements, so that the level of services being provided to a student is clear and consistent among school districts. New York City (NYC) has used the term "collaborative team teaching" (CTT) to identify a service that meets the regulatory definition of integrated co-teaching services. While other terms, such as blended or inclusion classes have been used by other school districts, the actual services provided varied among districts (e.g., some districts used the term inclusion class to identify a class where a teaching assistant and a general education teacher were assigned). To clarify for parents that a previously recommended service means the same as integrated co-teaching, terms such as CTT, blended class or inclusion class may also be indicated in the IEP.

| Special Education Program/Services                               | Frequency     | Duration                | Location      |
|--|---------------|-------------------------|---------------|
| Integrated Co-Teaching Services<br>(Collaborative Team Teaching) | 5 days a week | 40 minute class periods | English class |

**14. What is the maximum number of students with disabilities that can be included in a class where integrated co-teaching services are provided?**

Effective July 1, 2008, the maximum number of students with disabilities that can be on the class roster of a class where integrated co-teaching services is provided is 12. The total of 12 students includes any student with a disability in that class, regardless of whether all of the students are recommended for integrated co-teaching services. For example, if two students

with disabilities in a class are recommended for resource room and related services and ten are recommended for integrated co-teaching services, there are 12 students with disabilities in that classroom. While the two students in the above example may benefit incidentally from the integrated co-teaching services, their IEPs would not need to specify the integrated co-teaching services.

It is important to note that the Board of Regents, in implementing Special Education Mandate Relief, amended regulation to allow for class size variances in integrated co-teaching settings. A thirteenth student can be added by a district upon written notification to SED provided that the class began the school year in compliance. A fourteenth student may be added with prior approval of SED.

**15. What is the maximum number of nondisabled students that can be included in a class where integrated co-teaching services are provided?**

There is no regulatory maximum number of nondisabled students in an integrated co-teaching class. However, the number of nondisabled students should be more than or equal to the number of students with disabilities in the class in order to ensure the level of integration intended by this program option. A CSE's recommendation for integrated co-teaching services should consider the overall size of the class enrollment (which includes students with disabilities and nondisabled students) and the ratio of students with disabilities to nondisabled students in relation to the individual student's learning needs. An important consideration in determining the number of students with disabilities and nondisabled students on an integrated class roster is that the ratio must not result in a *de facto* segregated class which would undermine the philosophy of inclusive practices.