



RESEARCH TO PRACTICE #1:  
PLACEMENT ISSUES UNDER THE  
INDIVIDUALS WITH DISABILITIES ACT (IDEA)

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## PLACEMENT: THE BASICS

**Placement is not just a location.** Placement is not just the location where a student's IEP will be implemented. Placement encompasses the program, facilities, personnel, location, or equipment that will be needed to provide special education services. Placement is the web of services provided to a student with disabilities (*Weil v. Board of Education*, 93 F.2d 1069, 5<sup>th</sup> Cir. 1991). We often consider developing a student's IEP and determining his/her placement separate functions; however, they blend together and cannot be considered in isolation.

**Who makes the placement decision?** The Case Conference Committee must determine a student's placement, which is a group of persons knowledgeable about the student and his/her disability. The Case Conference Committee includes the student's parents.

**The critical importance of parents in the placement decision.** Local education agencies (LEAs) must ensure that parents are part of the group that determines a student's placement. If neither parent can participate in the placement meeting, the LEA may use other means to ensure their participation (e.g., conference call, video conference). If the LEA is unable to obtain the parents participation despite repeated attempts to contact the parents, the team may make the placement decision. If this is the case, the LEA must have thorough documentation of all of their attempts to reach the parents.

**What is parental participation?** Parental participation is more than parents' physical presence at a meeting; rather, it means the LEA encourages the parents to review information, ask questions, and offer their opinions and concerns. Furthermore, the LEA must keep an open mind and seriously consider parental input when making the placement decision. However, parents do not possess an absolute veto over the placement decisions.

**WARNING: An LEA may deny a student a free appropriate public education (FAPE) when...** If an LEA seriously limits the parents' right to meaningfully participate in the development IEP and the placement decision that can result in the denial of a FAPE.

**Relevant considerations.** LEAs must ensure that a student's placement is:

- Based on a student's individualized needs
- Determined annually (or more frequently if requested)
- Based on a student's IEP
- Determined in conformity with a student's IEP
- Provided in a student's home school, unless the IEP requires otherwise

- Provided close as possible to a student's home school
- Made considering any harmful effect on the student or peers
- Included in a written notice to the student's parents

**WARNING: Prohibited considerations.** Placement decisions must not be based solely on:

- Category of disability
- Severity of disability
- Availability of special education & related services
- Availability of supplementary aids and services
- Configuration of service delivery
- Availability of space
- Administrative consideration
- A lottery system
- Cost

### **LEAST RESTRICTIVE ENVIRONMENT (LRE): THE BASICS**

**LRE in the law.** According to the Individuals with Disabilities Education Act

- To the maximum extent appropriate students with disabilities are to be educated with students who are not disabled, and
- Removal may only occur when education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

**Continuum of Alternative Placements.** LEAs must have a full continuum of alternative placements available if needed to education a student with disabilities in the LRE. The continuum consists of:

- Regular classroom. This could include regular classroom with supplementary aids & services and regular classroom with resource room
- Special classes (i.e., self-contained classes)
- Special schools
- Hospital/Institution/Homebound

The regular classroom is the least restrictive placement and the hospital/institution/homebound setting is the most restrictive placement.

**IMPORTANT: A student should be placed in the least restrictive setting that is appropriate given his/her special individualized needs.**

**Harmful effects.** Case conference committees may determine that a student requires placement in an environment that is more restrictive than the general education classroom to receive an appropriate education. It is crucial that if the committee makes the decision based on harmful effects to the student or his/her peers the committee must thoroughly document these harmful effects and the efforts the LEA had taken to address these problems.

“where a child is so disruptive...that the education of other students is impaired...regular class placement would not be appropriate” (IDEA Regulations, 34 CFR § 300.552, comment).

**IMPORTANT: To prove harmful effects an LEA will need thorough documentation of the supplementary aids, services, and actions taken to address the problems that result in the harmful effects. This includes the provision of positive behavior interventions and supports if necessary.**

#### **Important consideration when determining LRE.**

- **Appropriateness**-Determine the appropriate special educational services for the student (IEP goals & services).
- **Individualization**-LRE is based on a student’s unique needs (one size does not fit all).
- **Supplementary aids & services**-LEAs must make good faith efforts to provide accommodations, including supplementary aids & services to maintain a student in the regular classroom.
- **Documentation**-LEAs should keep thorough documentation of such efforts.
- **Options**-The entire continuum of placements must be available and used if needed.
- **Integration**-Students with disabilities must be educated with nondisabled students whenever appropriate.

### **PLACEMENT PRACTICES TO AVOID**

**1. Predetermination.** Predetermination occurs when a student’s IEP team determines his/her placement or program prior to the IEP meeting and without parental participation.

**WARNING**-Definitive statements about a student’s placement (e.g., “We always...” or “We never...”) that are made before or during the meeting could constitute predetermination.

**Draft IEPs are OK but...**Prepare but don’t predetermine; under IDEA informal, unscheduled, or preparatory activities do not constitute a meeting.

“School officials must come to the IEP table with an open mind. But this does not mean that they should come...with a blank mind” (Doyle v. Arlington, 39 F.3d 1176, E.D. VA 1992).

The IEP team may develop a draft IEP but this could increase the risk of predetermination unless certain precautions are taken:

- School-based personnel can bring a draft IEP to the meeting, but they need to let parents know it is a draft and truly consider it a draft.
- Include the word “DRAFT” at the top of the IEP.
- Be willing to make changes based on parental input.

**2. IEP Problems.** Problems in IEP development must be avoided. Such problems include:

Not having all necessary members at the IEP team in attendance. It is especially important the student’s general education teacher be present for the meeting.

**WARNING-**The team must include at least one of the student’s general education teachers. This can be the student’s current teacher or a past teacher, but the teacher must have had the student. A counselor or teacher who has never had the student, even though he or she knows the general education curriculum, will not meet this requirement of the IDEA.

Not giving meaningful consideration to parental input.

**3. Shoehorning.** Shoehorning refers to deciding a student’s placement prior to determining annual goals and special education services, thus shaping a student’s IEP to fit a particular placement.

A student’s educational placement must be “based on the child’s IEP” (34 C.F.R. § 300.116(b)(2)).

**WARNING-**Do not decide a student’s placement before determining the student’s annual goals and special education services. Decide what before where.

**4. Overemphasizing the LRE requirement.** The IDEA prefers educating students in the “mainstream”, but LEAs must be careful that their attempts to comply with LRE do not result in predetermination (e.g., we only do inclusion and don’t place students in special classes).

“Do remember that program appropriateness is the primary IDEA mandate, and LRE is secondary” (Bateman & Linden, 2006; *Daniel R.R. v. State Board of Education*, 874 F.2d 1036 (5th Cir. 1989)).

**5. Inadequate documentation.** “If it’s not written down, it didn’t happen.”

LEAs that keep thorough records of discussions during meetings are in a much better position to defend themselves against claims of predetermination.

**WARNING-**Notes of IEP meetings that do not accurately reflect the discussion at a meeting may give rise to a claim of predetermination.

**6. The IEP does not confer FAPE.** A student’s IEP is the blueprint of his/her free appropriate public education, including placement.

**WARNING-**If the IEP does not confer meaningful educational benefit to the student, it does not provide a FAPE.

The path to a FAPE is a relevant assessment, meaningful and measurable annual goals, special education programming based on peer-reviewed research, and documentation of student progress through data collection.

## **DETERMINING EDUCATIONALLY MEANINGFUL AND LEGALLY SOUND PLACEMENTS**

“The IDEA requires that [school districts] provide the educational equivalent of a serviceable Chevrolet...[districts are] not required to provide a Cadillac” (*Doe v. Board of Education of Tullahoma City Schools*, 6th Cir. 1993).

School districts are not obligated to place students with disabilities in settings that will maximize their potential.

Schools are obligated to follow the procedural requirements of the law and choose a placement in the least restrictive environment that will confer meaningful educational benefit.

In other words, the Rowley test also applies to placement decisions (*A.K. v. Alexandria City School Board, 2007*). The Rowley test, which was the test developed by the U.S. Supreme Court in *Board of Education v. Rowley (1982)*, requires that when determining if a school delivered a FAPE to a student in special education a court should ask two questions: (a) Did the school district follow the procedural requirements of the IDEA, and (b) was the student's IEP reasonably calculated to confer educational benefit?

### **PLACEMENT FLOWCHART**

1. Determine FAPE
  - a. Measurable annual goals
  - b. Special education services based on peer-reviewed research
  - c. Progress-monitoring systems
  
2. Determine appropriate placement
  - a. Ability to implement the IEP in the chosen placement
  - b. Can FAPE be achieved using supplementary aids & services
  - c. If no, move through the continuum one step at a time
  
3. Provide integrated experiences
  - a. Even if students are in more restrictive settings provide the student experiences with nondisabled students

### **KEY POINTS REGARDING PLACEMENT**

Train faculty and administrators on the responsibilities and authority of IEP teams.

Adhere to the procedural requirements of the IDEA regarding placements.

Avoid policies, practices, and communications that could be interpreted as predetermination.

Involve parents in placement decisions (meaningfully).

Adopt an “open mind” policy regarding parental input.

Document all IEP team deliberations and supplementary aids & services.

Monitor student progress using appropriate data collection procedures.

## RESOURCES

Bateman, B.D. & Linden, M.A. (2006). *Better IEPs: How to Develop Legally Correct and Educationally Useful Programs*. IEP Resources, Attainment Company.  
[www.attainmentcompany.com](http://www.attainmentcompany.com)

Lake, S.E. (2007). *Slippery Slope: The IEP Missteps Every Team Must Know and How to Avoid Them*. LRP Publications. [www.lrp.com](http://www.lrp.com)

Slater, A.E. (2010). *Placement Under the IDEA: Avoiding Predetermination and Other Legal Pitfalls*. LRP Publications. [www.lrp.com](http://www.lrp.com)

IEP Resource Center: [www.indstate.edu/blumberg/iep](http://www.indstate.edu/blumberg/iep)