

Common GROUND

A Decade After Oberti:

The Promise, The Practice & The Politics

The year was 1984 when Jeanne and Carlos Oberti, welcomed their first child, Rafael into their family. He would shape not only their lives, but those of hundreds of thousands of children with disabilities, educators, courts and policy makers. Rafael was born with Down Syndrome, but more significantly, he was born to parents who would fight for his right to be educated in his home school along side his typical peers.

While their legal victories made national headlines and would leave a lasting footprint on special education policy and practice, Rafael's full inclusion in his home school remained illusive.

The Oberti's advocacy journey began in 1989 as Rafael prepared to enter kindergarten. The Clementon Child Study Team recommended that Rafael be placed in a segregated special education class located in another school district. The Oberti's objected. After visiting several special classes recommended by the district, the Obertis and the district came to an agreement: Rafael would attend a developmental kindergarten in Rafael's neighborhood school in the mornings, and a special education class in another school district in the afternoons. Rafael's academic goals were assigned to the special education class - his only goals in the typical kindergarten class were to observe, model and socialize.

While Rafael made academic and social progress, he experienced behavior problems in the developmental kindergarten. His teacher tried to get help and to modify the curriculum, but Rafael's IEP provided no plan for addressing behavior problems, nor did it provide for special education consultation, or for communication between the kindergarten teacher and the special education teacher. An instructional aid was added mid-year, but did little to improve the situation.

*"Inclusion is a right,
not a privilege for a
select few..."*

*- Judge Gerry,
Third Circuit Court of Appeals*

By the end of the year, the team suggested that Rafael be placed in a segregated special education class for children with mental retardation in a different district. The team's decision was based both on the behavioral problems Rafael experienced in the developmental kindergarten class and on the belief that Rafael's disabilities precluded him from benefiting from education in a regular classroom at that time.

The Obertis objected to a segregated placement and requested that Rafael be placed in the regular kindergarten class in the Clementon Elementary School. The district refused, and the Obertis sought relief by filing a request for a due process hearing thus beginning a three year odyssey of litigation and advocacy that would take them to the United States Third Circuit Court of Appeals.

When the Third Circuit issued its decision in May of 1993, it was hailed by advocates as a major victory for inclusive education. In a strongly worded decision,

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Spring 2004

C from the COURTS



“Inclusion:” From Brown v. Board of Education, to Oberti, and Beyond

by Paula Lieb, J.D.

To include children in the same classrooms as their neighborhood peers has been the focus of federal and state law since the Supreme Court observed in *Brown v. Board of Education*, in 1954, that, “[s]eparate ... facilities are inherently unequal.” *Brown* became the springboard upon which parents in Washington D.C. and Pennsylvania fought in court to end the exclusion of their children with disabilities from their public schools, and led directly to the passage of Public Law 94-142 in 1975, now known as the Individuals with Disabilities Education Act (IDEA).

Education with nondisabled peers was a principal objective of Congress in passing IDEA. The law entitles every eligible child with a disability to an appropriate education in the least restrictive environment, with the term “restrictive” used as a measure of the child’s opportunity to be educated with nondisabled peers. To ensure the inclusion of children with disabilities to the maximum extent possible, Congress added placement rules allowing removal from regular classrooms to “special classes or separate schooling” only when education could not be achieved satisfactorily in general education classrooms with the use of supplementary supports and services. Anticipating removal for other than educational reasons, the federal law further prohibited removal based upon the category of the disabling condition, the availability of space, staff, or services, administrative convenience, or any perceived attitude of nondisabled peers or teachers.

Although IDEA’s presumption was that priority would be given to placing children with disabilities in their home schools and in general education classrooms, for more than a decade, confusion reigned as to what was expected of school districts. However, between 1991 and 1993, the legal analyses of the federal courts around the United States converged, producing simple rules for districts to follow in considering placement. At the same time, these court decisions energized the efforts of educators to develop evidence-based practices to support diverse learners in the same general education classroom, such as differentiating instruction, teaching to multiple intelligences, using functional assessments, organizing cooperative learning groups, using technology—all practices which today are being used to enrich classrooms to the benefit of all children, those with and without disabilities.

New Jersey’s case law since 1993, beginning with *Oberti v. Board of Education*, has resulted in one of the strongest legal standards in the country supporting inclusion of students with disabilities in general education settings. In *Oberti*, the district court stated that “inclusion is a right, not a privilege for a select few.” In affirming this decision, the Third Circuit Court of Appeals developed a sequential test meant to preserve the core statutory imperative of IDEA that placement be based upon a child’s needs, not a disability category. First, regardless of a child’s disability, it must be determined “whether education in the regular classroom with the use of supplementary aids and services, can be achieved satisfactorily.” Second, a district is only justified in removing a child to a segregated setting if it has exhausted the range of possible supported general/special education setting combinations within the neighborhood school building.

Since *Oberti*, federal and administrative courts have fine tuned their expectations as to the efforts they expect of New Jersey’s school districts before removing a child with disabilities from their general education classroom

“...between 1991 and 1993, legal analyses of the federal courts around the the issue of inclusion converged, producing simple rules for districts to follow in considering placement, and energizing the efforts of educators to develop evidence based practices to support diverse learners in general education classrooms...”

and neighborhood school. It is the quality, not quantity of supports that is important; whether a child with significant challenges can reach the curricular goals of the rest of the class is irrelevant. For example, at the federal court level, in *Girty v. School District of Valley Grove* (2002), the Third Circuit affirmed a district court decision and ordered that “Spike” *Girty*, a 14-year-old with significant disabilities, reading on a pre-readiness level, receive his special education program in general education classrooms in his middle school rather than in the life skills classroom sought by the district. The district had argued that Spike be pulled out because, even with the provision of an aide and accommodations, the sixth grade curriculum still could not be modified down to his level. The court rejected this argument, observing that “the relevant focus is whether Spike can progress on his IEP goals in a regular education classroom with supplementary aides and services, not whether he can progress at a level near to that of his non-disabled peers.” The school district was faulted for not providing Spike with systematic instruction, for leaving all responsibility for his educational program to his aide, and for failing to provide supports to his general education teachers or to train them in modification techniques.

As an example of the inclusion analysis in cases at the due process level, in *Chester Township Board of Education v. J.R. on behalf of E.R.* (2000), an administrative law judge (ALJ) ordered that E.R., a 13-year-old girl with Down syndrome and significant behavior challenges, remain in her home school with all necessary supports and accommodations, rejecting the out-of-district special education school sought by the district. While acknowledging that the school district had the right intent and had “spent a great deal of time, effort, and personnel in its genuine efforts” the ALJ found that the modifications that had been provided as part of E.R.’s in-district program were unsystematic and either “inadequate or inappropriate” and that the behavioral support plan created in consultation with the district’s behavior expert, “[f]ell] short of what was reasonable and necessary under the circumstances.” The ALJ rejected testimony from district staff that lessons could not be modified down to E.R.’s level, citing testimony from E.R.’s experts that they had successfully modified curriculum for students with E.R.’s characteristics in public school classrooms elsewhere. The ALJ faulted the district for failing to provide the teacher with “much needed technical assistance and training.”

With the touchstone being the quality, not quantity, of supports and considering that many districts are training their staffs and experiencing success in including children with disabilities in general education classrooms, it is more likely than not that courts will increasingly expect properly supported inclusive classrooms to become the rule—not the exception—in New Jersey.

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IDEA Requirements for Placement in the Least Restrictive Environment

EDITORS NOTE: *The least restrictive environment (LRE) requirements of Part B of the Individuals with Disabilities Education Act (IDEA) have been included in the law in their present form since 1975. However, these requirements continue to generate complex and interesting questions. In particular, questions have been raised about the relationship of IDEA's LRE requirements to "inclusion." This special FROM THE CAPITOL features a question and answer summary of the LRE requirements of IDEA from the US Department of Education.*

Q: What are the least restrictive Environment (LRE) requirements of Part B of IDEA?

A: In order to be eligible to receive funds under Part B of IDEA (IDEA), States must, among other conditions, assure that a free appropriate public education (FAPE) is made available to all children with specified disabilities in mandated age ranges.

The term "FAPE" is defined as including, among other elements, special education and related services, provided at no cost to parents, in conformity with an individualized education program (IEP).

The IEP, which contains the statement of the special education and related services to meet each disabled students' unique needs, forms the basis for the entitlement of each student with a disability to an individualized and appropriate education.

IDEA further provides that States must have in place procedures assuring that, "to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

Q: How does IDEA define "inclusion?" and "LRE"?

A: IDEA does not use the term "inclusion"; so the 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 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 and 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 students' 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

IDEA requires an individualized inquiry, not a "one size fits all" approach, in determining what placement is the LRE for each student with a disability.

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.

Q: How can IDEA requirements be implemented to ensure that consideration is given to whether a student with a disability can be educated in the regular educational environment with the use of supplementary aids and services before a more restrictive placement is considered?

A: The relationship of IDEA's LRE requirements to the IEP process is key, since under IDEA, the student's IEP forms the basis for the student's placement decision.

IDEA requires that the IEP of each disabled student must contain, among other components, a "statement of the specific special education and related services to be provided to the child and the extent that the child will be able to participate in regular educational programs."

At the student's IEP meeting, the extent that the student will be able to participate in regular educational programs is one of the matters to be addressed by all of the participants on the student's IEP team before the student's IEP is finalized. In addressing this issue, the team must consider the range of supplementary aids and services, in light of the student's abilities and needs, that would facilitate the student's placement in the regular educational environment. As discussed in question 4 below, these supplementary aids and services must be described in the student's IEP.

Q: Does IDEA define the term "supplementary aids and services?"

A: No. However, in determining the educational placement for each disabled student, the first

line of inquiry is whether the student's IEP can be implemented satisfactorily in the regular educational environment with the provision of supplementary aids and services. This requirement has been in effect since 1975 when the education of the Handicapped Act (EHA), the predecessor to the IDEA, originally became law.

Consistent with this requirement, any modifications to the regular educational program, i. e. , supplementary aids and services that the IEP team determines that the student needs to facilitate the student's placement in the regular educational environment must be described in the student's IEP and must be provided to the student. While determinations of what supple-

mentary aids and services are appropriate for a particular student must be made on an individual basis, some supplementary aids and services that educators have used successfully include modifications to the regular class curriculum, assistance of an itinerant teacher with special education training, special education training for the regular teacher, use of computer-assisted devices, provision of notetakers, and use of a resource room, to mention a few.

Q: How frequently must a disabled student's placement be reviewed under IDEA?

A: Under IDEA, each disabled student's placement must be determined at least annually, must be based on the student's IEP, and must be in the school or facility as close as possible to the student's home.

Under IDEA, each student's placement decision must be made by a group of persons, including persons knowledgeable about the student, the meaning of evaluation data and the placement options. While the student's IEP forms the basis for the placement decision, a student's IEP cannot be revised without holding another IEP meeting, which the school district is responsible for convening.

If either the student's parent or teacher or other service provider wishes to initiate review of the student's IEP at a point in the school year that does not correspond with the annual IEP review, that individual can request the school district to hold another IEP meeting. If the IEP is revised, following the meeting, the placement team would need to review the student's IEP to determine if a change in placement would be needed to reflect the revised IEP.

Q: If a determination is made that a student with a disability can be educated in regular classes with the provision of supplementary aids and services, can school districts refuse to implement the stu-

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A Decade of Oberti

continued from the cover

Judge Garry wrote:

"Rafael should not have to earn his way into an integrated school setting by first functioning successfully in a segregated setting,"

"Inclusion is a right, not a privilege for a select few."

In spite of the legal victory, little changed for Rafael and his family. "Even after the decision, we knew we still couldn't send him back there (to Clementon Public Schools)," said Jeanne Oberti, Rafael's mother. "After you go to court, it's hard to get back on the same side of the table. Once there are 'sides' - an going to court creates 'sides' - the discussion is over. It's almost impossible to *really* work together again."

"...After you go to court ... it's almost impossible to come back and work together again."

- Jeanne Oberti

Rafael spent most of his early grade school years at a small private Christian school near the Oberti's home, where Rafael was welcomed and supported. "They weren't told they *had* to do this, they *wanted* to do this," Jeanne said. "They wanted it to work as much as we did."

She credits coming together around a shared vision for Rafael as playing a key role, along with quality pre-service training. Recalling a week-long training at the University of Vermont during which time she and Rafael's 4th grade team were trained together, Jeanne said, "It was amazing. I really learned how to support Rafael's teachers, and they learned how to support him. Suddenly, everyone was Rafael's advocate."

Because the private school Rafael attended only went to the 5th grade, Rafael was transferred to another private school, where things did not go quite as well. Eventually, Rafael's family moved to Pennsylvania.

Moving so Rafael could be part of a community made sense to Jeanne. "Changing schools and moving wasn't so bad," says Jeanne. "Today, families move all the time for lots of reasons. Few families stay in one place."

While Jeanne and Carlos Oberti continued to seek out school environments where Rafael would be welcomed and supported, policy makers and legal analysts produced volumes on the significance of the Oberti decision. Its "tree pronged test" (see side bar, *left*) shaped New Jersey state code and gave structure to the annual placement decision-making process for hundreds of thousands of classified students in New Jersey. As a result of the decision, there would be "white papers," "position papers," local, state and national conferences, and a response from the U.S. Department of Education. Courts across the country continue to rely on the framework of the Oberti decision as they consider similar cases.

In spite of all the changes and challenges, Jeanne contends that Rafael's inclusive experiences have been positive and powerful, and that he is an important member of the community in which he now lives. At nineteen, Rafael has a part time job at CBS arranged by his father, where he stocks and straightens.

According to Jeanne, Rafael is still fully included in high school in Springfield Pennsylvania, where he has attended school since seventh grade. "He knows everyone here because he is part of his community, and he is part of the community because he is part of the school" she says.

Because he is still exploring career options, Jeanne hopes to see him in school for at least one more year. Once he leaves school however, the protections of IDEA, its benefits and guarantees will no longer apply to Rafael; The battle for full access and accommodations will be considered under the ADA, a much less stringent law when it comes to full inclusion.

To read the full decision, visit a local law library (Oberti v. Board of Education (995 F.2d 1204 [3rd Cir.1993] 19 IDELR 908) Or read the decision on line at: www.copaa.net/decisions/3rd-oberti.

The Oberti Decision Shaping Policy and Practice in New Jersey

The Court in the Oberti decision established a three prong test for determining placement in the least restrictive environment. Because New Jersey is part of the Third Circuit, the Oberti decision is the standard for the state. In 1995, the state special education code adopted by the New Jersey State Board of Education incorporated this test.

The Oberti decision and its codification in the special education code, require that equal consideration be given to each of the following factors when making decisions regarding regular class placement:

1. Consideration of placement in the regular classroom.

At issue is whether the student's IEP can be implemented satisfactorily in the regular classroom with supplementary aids and services. Although IDEA does not define the term "supplementary aids and services," the United States Department of Education suggests several possibilities including, but not limited to, modification of the regular class curriculum, behavior management techniques, assistance of an itinerant teacher with special education training, special education training for the regular class teacher, use of assistive technology, provision of notetakers, use of a resource center or a combination of these.

2. Comparison of the benefits in the regular class and the benefits in the special class.

The United States Court of Appeals for the Fifth Circuit determined that the appropriateness of placement in the regular classroom is not dependent on the student's ability to learn the same things that other students learn in the regular classroom. The benefit from social interaction of the student with nondisabled peers is a legitimate benefit that can be derived from placement in the regular classroom.

3. Consideration of the potentially beneficial or harmful effects that placement in the regular classroom may have on the student with educational disabilities and the other children in the class.

Two examples of the many beneficial social and academic effects that may accrue to a student with disabilities include positive peer models and high expectations for achievement. The potentially beneficial effects on the other children in the class are fostered as they learn to understand and accept the individual differences of their peers. Harmful effects may include the disruptive behavior of a student with disabilities if the disruptiveness is severe enough to significantly impair the education of other students. The school district must demonstrate that full consideration has been given to the complete range of supplementary aids and services that could be provided to the student to deal with the problem behaviors.

From these requirements, a sequential process can be constructed to assist districts in making placement decisions.

An appropriate decision-making sequence begins with the question of what are the student's educational needs. The determination of what constitutes an appropriate program for a student comes before the question of where it will be provided. An inadequate IEP will make it difficult to consider any child's placement in an organized way.

Next, each placement option is examined not only as it currently exists, but also as it might be modified. Then, each educational placement option is examined in sequence from least restrictive to most restrictive. Regular class placement is examined as the first option.

Adapted from an NJDOE memorandum dated August 1995 and updated May 1999. The full text of the memo can be found on line at www.state.nj.us/njded/specialed/le

By Marcie Roth

I have been fighting for children with disabilities to be able to receive a free appropriate public education since before PL 94-142 -- now called the Individuals with Disabilities Education Act, or IDEA -- was passed, back in 1975. I have represented hundreds of families as they fought to get their children that free appropriate public education in their neighborhood school, in the classroom the child would have attended if they didn't have a disability.

I have been active in the leadership of national organizations fighting for inclusion. I've provided training and technical assistance to states, communities, school districts and schools on exactly how to include students with disabilities in general ed.

Funded by U. S. and the State Department of Education, I spent three years in classrooms across my state, showing school teams how to include students. I've been widely published on the topic of inclusion, and have developed a number of tools that are in use today in general ed classrooms. I can honestly say I've never met a child who can't successfully be included, under the "right" circumstances, no matter what.

You Can Only Imagine...

Yet last spring I put my 11-year-old son Dustin on a short bus and sent him to a segregated school in another county at a cost of \$50,000-plus per year to the taxpayers of my community.

Shocking? You can only imagine.

I have been battling with our school system for four years to get Dustin the educational supports and services he needs -- and is legally entitled to -- without success. Despite intervention from the Maryland State Department of Education, the U. S. Department of Education, Congress, the White House, and even a superbly honest article by reporter Jay Mathews that ran in the Washington Post, Dustin's Individualized Education Plan -- his "IEP" -- was never implemented. Not for one day.

This is not just my view of things, but the actual "Findings" from the Maryland State Department of Education. (I have four such "Letters of Findings.") No behavior support plan, no keyboarding, no extra set of books for home, inadequate testing, outright lies. And then there was the abuse, also honestly portrayed in the Washington Post.

Despite it all, rather than implement Dustin's IEP, as required by law, my school system decided they couldn't serve him. They wanted him placed in a segregated school in another county.

...If you want to be part of the solution, don't take sides on inclusion. Put your energy toward demanding full implementation and enforcement of IDEA. Until our children are assured that the law will really be implemented and enforced, the rest of the debate is irrelevant.

'I made the honor roll'. . .

Dustin's last report card had shown N/G, which meant no grade, in every subject except physical education, where he received the single A that apparently qualified him for the honor roll.

Dustin was bragging about the award in his science class at Tilden Middle School in Rockville when his teacher interrupted him. 'I can't allow you to be dishonest in this class,' the woman said. 'You didn't make the honor roll, Dustin.'

When my son objected, the teacher apparently forgot she was dealing with a fragile ego in a room full of children and said, "You couldn't have made the honor roll because you failed my class."

I was fortunate, though. Because of our high profile (and the Washington Post article), I was able to reject the hellholes they tried to send Dustin to (where 4-point restraint and timeout rooms are still in use), and managed to get him into a truly wonderful school, as segregated schools go.

In less than two weeks, my previously devastated child began to blossom. I have never seen him as proud as he was when he signed his name to a gift for his grandparents. He looked at me, beaming, and said "Look what the OT taught me to do!" Dustin was supposed to have received occupational therapy services as far back as 1998, but it took until now for it to actually happen.

Legal Action??

I'll bet you're wondering why I didn't take legal action to force implementation of the IEP. I tried. I did as much as I could. A few wonderful people stepped up to help me, but I was unable to afford the legal battle I needed to fight, and I was well aware that even with adequate resources to spend on a lawsuit (\$50,000 or more), I was likely to lose anyway. There are very few legal resources for people like me. Last year, I spent \$8,000 for

professional experts to attend meetings -- professionals I would have needed to use as expert witnesses in a hearing had I pursued a lawsuit. This was in addition to the \$14,000 I spent out of pocket on copays for healthcare, after my really decent health insurance paid its portion.

While I was struggling to pay experts to attend meeting after meeting, as I fought for my child's right to an education, my school system was paying lawyers \$650 an hour or more to fight parents like me. Where did they get that money to spend? Taxpayer dollars, of course! they used my taxpayer dollars -- yours, too -- against my child.

They should be able to include him

Dustin's neighborhood school should be able to include him. But they have proven that they have neither the will nor the way to do it. I am a staunch inclusionist who now says: "you're wasting your breath on that argument."

My new friends -- parents of kids in segregated schools -- will fight to the death to keep these segregated schools -- until we can be guaranteed that inclusion will not hurt our children.

I am far more aware than most that it really is possible to get inclusion right. I'm also far more aware than most of just how wrong inclusion is when it's not done right.

My child will no longer pay a price for my ideology. He's paying a different price right now -- the price of being segregated from his nondisabled peers. I get to live with the guilt of allowing this. Supporting it, even.

If you want to be part of the solution, don't take sides on inclusion. Put your energy toward demanding full implementation and enforcement of IDEA. Until our children are assured that the law will really be implemented and enforced, the rest of the debate is irrelevant.

dent's IEP in a specific class because of the unwillingness of a particular teacher 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?

A: Under IDEA, lack of adequate personnel or resources does not relieve school districts of their obligations to make 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 regular class based on the qualifications of the particular teacher is permissible under both statutes.

The public agency 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. The Department encourages States and school districts to develop innovative approaches to address issues surrounding resource availability. Factors that could be examined include cooperative learning, teaching styles, physical arrangements of the classroom, curriculum modifications, peer mediated supports, and equipment, to mention a few.

Q: Once a determination is made that a disabled student cannot be educated satisfactorily in the regular educational environ-

"...IDEA does not require that every student with a disability be placed in the regular classroom regardless of individual abilities and needs ... school districts must make available a range of placement options..."

ment, even with the provision of supplementary aids and services, what considerations govern placement?

A: 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 disabled student 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 state and federal code including 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 disabled student. The placement team must select the option on the continuum in which it determines that the

"...in determining the educational placement for each student, the first line of inquiry is whether the student's IEP can be implemented satisfactorily in the regular educational environment with the provision of supplementary aids and services..."

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.

Q: What are the permissible factors that must be considered in determining what placement is appropriate for a student with a disability? Which factors, if any, may not be considered?

A: The overriding rule in placement is that each student's placement must be individually-determined based on the individual student's abilities and needs. As noted previously, it is the program of specialized instruction and related service contained in the student's IEP that forms the basis for the placement decision.

In determining if a placement is appropriate under IDEA, the following factors are relevant:

- the educational benefits available to the disabled student in a traditional classroom, supplemented with appropriate aids and services, in comparison to the educational benefits to the disabled student from a special education classroom;
- the non-academic benefits to the disabled student from interacting with nondisabled students; and;
- the degree of disruption of the education of other students, resulting in the inability to meet the unique needs of the disabled student.

Q: 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?

A: 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 placement team determines that even with

School districts may not make placements based solely on factors such as the following:

- category of disability
- severity of disability
- configuration of delivery system
- availability of educational or related services
- availability of space
- administrative convenience.

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.

While IDEA regulations permit consideration of the effect of the placement of a disabled student in a regular classroom on other students in that classroom, selected findings from Federally funded research projects indicate that:

- (1) achievement test performance among students who were classmates of students with significant disabilities were equivalent or better than a comparison group;
- (2) students developed more positive attitudes towards peers with disabilities ; and
- (3) self concept, social skills, and problem solving skills improved for all students in inclusive settings

Q: Are there any resources that the Department is aware of that have proven helpful to educators and paraprofessionals in implementing inclusive educational programs?

A: The Department has supported a variety of professional development and training projects (e. g., preservice, inservice, school restructuring projects) that address the needs of students with disabilities in inclusive educational programs.

In addition, the Department has financed Statewide Systems Change projects which support changing the setting for the delivery of educational services from separate settings to general educational settings in the school that the student would attend if not disabled.

Numerous materials and products have been developed by these projects which have focused on the strategies that support collaborative planning and problem solving, site based control, curriculum and technological adaptations and modifications, parent and family involvement, and the creative use of human and fiscal resource. These projects have underscored the importance of timely access to resources (e.g., people, materials, information, technology) when they are needed.

Using Scaffolded Instruction to Optimize Learning for All Students

by Martha Larkin

The ultimate academic goal is for students to become independent life-time learners, so that they can continue to learn on their own or with limited support. Using scaffolded instruction optimizes student learning by providing a supportive environment while facilitating student independence.

Scaffolded instruction is "the systematic sequencing of prompted content, materials, tasks, and teacher and peer support to optimize learning" Scaffolded instruction is a process in which students are given support until they can apply new skills and strategies independently. When students are learning new or difficult tasks, they are given more assistance. As they begin to demonstrate task mastery, the assistance or support is decreased gradually in order to shift the responsibility for learning from the teacher to the students. Thus, as the students assume more responsibility for their learning, the teacher provides less support. For example, a young child or a child with physical disabilities likely would need assistance when learning how to use a playground slide. At first an adult might carry the child up the steps and slide with the child several times. Then some of the scaffolding or support would be removed when the adult placed the child on the lower portion of the slide

"...scaffolding is one of the principles of effective instruction that enables teachers to accommodate individual student needs..."

and allowed him or her to slide with little guidance. The adult would continue to remove the scaffolding as the child demonstrated that he or she could slide longer distances successfully without support.

Research shows that scaffolding is one of the principles of effective instruction that enables teachers to accommodate individual student needs. The literature describes eight essential elements of scaffolded instruction that teachers can use as general guidelines. Note that these elements do not have to occur in the sequence listed.

1. Pre-engagement with the student and the curriculum. The teacher considers curriculum goals and the students' needs to select appropriate tasks.
2. Establish a shared goal. The students may become more motivated and invested in the learning process when the teacher works with each student to plan instructional goals.
3. Actively diagnose student needs and understandings. The teacher must be knowledgeable of content and sensitive to the students (e.g., aware of the students' background knowledge and misconceptions) to determine if they are making progress.
4. Provide tailored assistance. This may include cueing or prompting, questioning, modeling, telling, or discussing. The teacher uses these as needed and adjusts them to meet the students' needs.
5. Maintain pursuit of the goal. The teacher can ask questions and request clarification as well as offer praise and encouragement to help students remain focused on their goals.

Scaffolding Throughout The Lesson

In order to incorporate scaffolding throughout the lesson, teachers may find this framework helpful.

First, the teacher does it. In other words, the teacher models how to perform a new or difficult task, such as how to use a graphic organizer. For example, the teacher may have a partially completed graphic organizer on an overhead transparency and "think aloud" as he or she describes how the graphic organizer illustrates the relationships among the information contained on it.

Second, the class does it. The teacher and students work together to perform the task. For example, the students may suggest information to be added to the graphic organizer. As the teacher writes the suggestions on the transparency, students fill in their own copies of the organizer.

Third, the group does it. Students work with a partner or a small cooperative group to complete a graphic organizer (i.e., either a partially completed or a blank one).

Fourth, the individual does it. This is the independent practice stage where individual students can demonstrate their task mastery (e.g., successfully completing a graphic organizer to demonstrate appropriate relationships among information) and receive the necessary practice to help them to perform the task automatically and quickly.

6. Give feedback. To help students learn to monitor their own progress, the teacher can summarize current progress and explicitly note behaviors that contributed to each student's success.
7. Control for frustration and risk. The teacher can create an environment in which the students feel free to take risks with learning by encouraging them to try alternatives.
8. Assist internalization, independence, and generalization to other contexts. This means that the teacher helps the students to be less dependent on the teacher's extrinsic signals to begin or complete a task and also provides the opportunity to practice the task in a variety of contexts.

Although scaffolding can be used to optimize learning for all students, it can be a demanding form of instruction for teachers. Knowing the curriculum well will enable you to determine the difficulty level of particular materials and tasks, and the time and supports necessary to benefit students. It may be helpful to generate prompts to help students and to have "back up" wording if the first prompt you use does not help the student give the appropriate response.

Remain positive, patient, and caring. Continued scaffolding efforts and student success soon will be evident.

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spring 04



SNAPSHOT

Inclusive Education in New Jersey *Past, Present and Future*

1

In 1993, the year of the Oberti decision, 8.9 percent of students with disabilities aged 6-21 in New Jersey were educated in self-contained school buildings (public and private) without access to typical peers, compared to a national average of 3.27 percent.

2

Seven years later, in 2000, the percentage of New Jersey students with disabilities in segregated buildings remained steady at 8.9 percent, while the nation average fell slightly to 2.90 percent.

3

In 1991, 42.6 percent of the classified students in New Jersey were placed in self-contained classes for students with disabilities, as compared to a national average of 31.7 percent.

4

In 1991, 2.5 percent of the students with mental retardation in New Jersey were educated in general education classes, as compared to a national average of 30.4 percent.

5

In 2000, New Jersey placed 39 percent of IDEA-eligible students with emotional disabilities aged 6-21 in self-contained public and private school buildings without access to typical peers, compared to 7.5 percent national average for the same group of students.

6

In 2000, one in four (25%) of New Jersey's students with mental retardation were placed in segregated school buildings (public

and private) without access to typical peers, compared to 5.47% nation-wide.

7

The New Jersey Department of Education has issued placement goals for 2014, intended to indicate the State's progress toward full implementation of IDEA's LRE provisions. One such indicator is to reduce the percentage of students with disabilities served in public or private separate settings from 9.1 percent to 5.5 percent.

8

By 2014, the New Jersey Department of Education hopes to increase the percentage of students with disabilities included in general education for more than 80% of the school day, from 41.9 percent to at least 50 percent.



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