

THE LEAST RESTRICTIVE ENVIRONMENT REQUIREMENTS OF FEDERAL AND STATE EDUCATION LAWS

MYTHS vs. FACTS

This document clarifies some of the commonly misunderstood issues regarding the need to progress in building the capacity of Maryland school systems to comply with the requirements and congressional intent of federal laws regarding Least Restrictive Environment.

MYTH: Parents, advocates, and researchers who support inclusive education do not support a continuum of placements.

FACT: Parents, advocates, and researchers who support inclusive education seek to improve and increase the ability of schools and school systems to offer inclusive education in each neighborhood school. They do not seek to eliminate the continuum of placements.

Federal law requires a continuum of placements from the neighborhood school to private residential settings. In our history, we have done a good job of providing separate and “special” classrooms but we have not developed our ability to offer special education services in the general education setting.

- The Individuals with Disabilities Education Act (IDEA) requires states and local school systems to ensure that there is a continuum of placements to meet the needs of all children with disabilities.
- The “LRE” or “Least Restrictive Environment” requirement says that students with disabilities should be educated in the school the student would attend if not disabled, alongside peers without disabilities. *Removal from the regular education environment should occur **only** if education in the regular education environment, with the use of supplementary aids and services, cannot be achieved satisfactorily.*
- According to the United States Office of Civil Rights (OCR) and the Office of Special Education Programs (OSEP), local school systems may not use the current configuration of service delivery, administrative convenience, or curriculum modifications as a justification for placing children in more restrictive placements.
- Maryland local school systems repeatedly failed to demonstrate the ability to provide services specified in the IEP in the least restrictive environment, and in some cases have failed to even attempt to do so.ⁱ

MYTH: Proponents of inclusive education want all children with disabilities placed in the general education classroom regardless of their individualized needs.

FACT: Proponents of inclusive education advocate that a student’s educational placement be based on his or her individual needs.

THE ISSUE IS THIS: Federal and state data indicate that when determining placement, Individualized Education Program (IEP) teams often do not *first* consider the general education classroom with appropriate individualized supports and services. Increased access to the general education setting for students with disabilities can only occur if Maryland schools have the resources and capacity to provide each individual child with appropriate supports and services in the least restrictive environment and receive a high quality education. Local school systems need to allocate adequate resources and services to make the general education classroom the place where children with disabilities can be effectively educated alongside their peers without disabilities.

*Proponents of inclusive education recognize that for a small number of children with disabilities, a more restrictive placement may be appropriate in order to meet the students' needs. They also recognize that because of systemic barriers, many other students are placed in restrictive settings, often separate schools, although their needs could actually be met in less restrictive settings if appropriate aids and services were in place.*ⁱⁱ



MYTH: Proponents of inclusive education attempt to speak for ALL children with disabilities and their families.

FACTS: Proponents of inclusive education speak for families who desire inclusive education and they seek to promote systemic change toward inclusive education for students with disabilities.

The authors of this document are proponents of inclusive education. They represent advocacy and legal groups that serve families who have children with disabilities.

- The Maryland Disability Law Center (MDLC) and the Maryland Development Disabilities Council (MDDC) are mandated by the federal Developmental Disabilities Bill of Rights and Assistance Act to work at a systems level to eliminate the barriers to inclusive communities for people with developmental disabilities and their families. As a legal organization, MDLC represents individuals and families with diverse education issues, often unrelated to LRE.
- Other organizations, such as the Maryland Coalition for Inclusive Education (MCIE), work to assist local school systems to build their capacity to serve children in the least restrictive environment and provide more inclusive opportunities. The LRE requirements of the IDEA require the types of technical assistance and training as those offered by MCIE.
- Advocacy organizations such as The Arc of Maryland and TASH represent the policies and resolutions adopted by their respective Boards and Members, and supported by years of research and practice. These groups work in partnership with many other disability advocacy organizations, as well as local and state education agencies, community organizations, and others to address system wide issues.ⁱⁱⁱ

MYTH: Proponents of inclusive education are trying to take away parents' choices.

FACT: Proponents of inclusive education want to expand the range of quality services by promoting the development of inclusive education in every neighborhood school. *They could not take away "choice" even if there was a desire to do so, simply because the Individuals with Disabilities Education Act (IDEA) is not a parent "choice" statute.*

The IEP team, which includes the parent, is empowered by law to develop the IEP and determine where that IEP will be implemented. In accordance with federal and state law the IEP must be implemented in the least restrictive environment in which the student's needs can be met. The decision of whether or not to exercise their due process rights to challenge IEP team decisions is the "choice" afforded to parents by the IDEA.^{iv}

MYTH: Inclusive education is more expensive than education of students with disabilities in segregated settings.

FACT: Inclusive education requires the same resources as separate special education.

In Maryland, when schools have restructured their service delivery approach to be inclusive, the only additional costs have been those associated with change. All new initiatives require training. Teachers need to have the time to learn how to collaborate. Time needs to be spent on inservice training for collaborative planning. While the overall costs of special education are increasing, the per child cost as compared to students who do not receive special education services has actually gone down.



MYTH: Students with significant disabilities show greater achievement and results in segregated and in private settings.

FACT: Students with ANY disability show greater achievement and academic progress in inclusive settings.

“Over 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by...providing appropriate special education and related services and aids and supports **in the regular classroom** to such children...” (The IDEA, 105th Congress, 1997).

- There is no research that supports the provision of self-contained classes or separate schools as a means of offering a place in which students will have greater progress than in the neighborhood school. There is some evidence regarding elementary students who have reading disabilities that they benefit from additional tutoring.
- Regarding students who have severe or multiple disabilities: They may appear to have such challenging impairments, and their needs appear to be either so very basic, or so complex that teaching these students in highly academic, typical classrooms seems improbable, and at the least, impractical. Research and best practice show, however that students with these types of disabilities perform better socially and academically in less restrictive environments with almost constant stimulation and numerous and spontaneous opportunities to interact with peers.^v

MYTH: Federal, State, and Local education agencies are mandating that a certain percentage of students with disabilities be fully included, regardless of individual needs.

FACT: Federal, State, and Local Education agencies are using data on a variety of issues, including suspensions and expulsions, disproportionality, state and local assessment scores, graduation rates, and educational placement as indicators of their special education systems' capacity.

Data regarding the placement of students with disabilities in general education classrooms are highly variable across the country and state. For example, 1999/2000 data from OSEP show that Vermont includes 55.64% of its students with mental retardation in general education classrooms, compared to Maryland's 7.93%. The 2001 MSDE Special Education Census reveals that 1.79% of Harford County students with mental retardation are included in the general education classroom compared to 40.82% in Dorchester County. These data, along with data showing that Maryland's African-American and Hispanic students with disabilities are more likely to be educated in segregated settings, are useful in showing how special education service delivery systems are configured and why they should be reformed.

Federal and State law require that the education and placement of students with disabilities be individualized. It is appropriate, however, for school systems to use placement and other special education data as indicators from which to develop improvement plans and set goals, and, in fact, No Child Left Behind (NCLB) requires states to account for the achievement of all school students in a manner that results in continuous and substantial improvement. In addition, Federal State Improvement Grants, such as the one Maryland State Department of Education has received from OSEP, require specific indicators to be identified and measured.^{vi}



This document was developed by the following organizations:

The Arc of Maryland is a statewide public policy advocacy organization committed to dignity, civil rights, quality supports, community inclusion, and the empowerment of individuals with cognitive and developmental disabilities and their families.

The Maryland Coalition for Inclusive Education (MCIE) is dedicated to the inclusion of students with disabilities in their neighborhood schools. Founded in 1988 by a group of parents and educators, MCIE provides a variety of services to families, schools and the general community. MCIE offers legal advocacy to families seeking less restrictive opportunities for their children. MCIE also offers support and training to assist families and administrators break down the barriers to inclusive education. MCIE helps families and schools make inclusive education a reality in Maryland public schools.

The Maryland Developmental Disabilities Council advocates for public policy and supportive practices and opportunities that promote the full inclusion of all people with developmental disabilities in community life. The Council participates in developing public policy and effective supports and services through activities of systemic change, capacity building and advocacy. The Council designs and sponsors innovative projects to show responsive, positive ways of supporting people with disabilities.

The Maryland Disability Law Center (MDLC), Maryland's protection and advocacy agency, is a nonprofit, public interest law firm with a mandate to protect and advocate for the rights of persons with disabilities. MDLC's current priorities include work in the areas of developmental disabilities abuse and neglect, community services, mental health, social security, Medicaid, housing, transportation, and special education.

TASH (formerly The Association of the Severely Handicapped) is an international membership association leading the way to inclusion, opportunity, equal access, and best practice based on research for people labeled with disabilities. The strength of TASH is in its diverse membership from thirty-five countries around the world ~ thousands of parents, individuals with disabilities, researchers, educators, employers, and other concerned citizens who together take action every day to eliminate boundaries, change systems, build capacity, and arouse consciousness. TASH focuses on the concerns and rights of those people with disabilities who are at most risk of exclusion and segregation; and supports the inclusion and full participation of children and adults with disabilities in all aspects of their communities as determined by personalized visions of quality life.

ⁱ (1) *The Blueprint for Change* (2003), www.family-networks.org; (2) *MSDE Technical Assistance Bulletin 91 – Placement Determination in the Least Restrictive Environment (LRE)*; (3) 34 C.F.R. §300.550 and .552; (4) *Maryland Monitoring Report* (2000), Office of Special Education Programs.

ⁱⁱ (1) *Code of Maryland Agency Regulation (COMAR)*, Title: 13A.05.01.10 (Least Restrictive Environment); (2) 34 C.F.R. §300.552; (3) *Maryland Monitoring Report* (2000), Office of Special Education Programs; (4) *Twenty-Fourth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (2003), OSEP.

ⁱⁱⁱ (1) Developmental Disabilities Bill of Rights and Assistance Act of 2000; (2) 34 C.F.R. § 300.555

^{iv} 34 C.F.R. §300.550-556.

^v (1) 20 U.S.C. §1400(b)(5) (2) Gail McGregor & R. Timm Vogelsberg, *Inclusive Schooling Practices: Pedagogical and Research Foundations: A Synthesis of the Literature that Informs Best Practices in Inclusive Schooling*. (Paul H. Brookes Pub. 1998); (3) R. Turnbull, A. Turnbull, M. Shank & S. Smith, *Exceptional Lives: Special Education in Today's Schools*, (Merrill/Prentice Hall 2004) (4) Downing, June E. (2002) Educating Students with Diverse Strengths and Needs Together. In *Including Students with Severe and Multiple Disabilities in Typical Classrooms*. pp.4-5. Baltimore: Paul H. Brookes Publishing Co.

^{vi} (1) *Twenty-Fourth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (2003), OSEP, p.I-27.; (2) *2001 Special Education Census*, MSDE