LEAST RESTRICTIVE ENVIRONMENT AND INCLUSION: WHAT DOES THIS MEAN FOR A SPECIAL EDUCATION STUDENT?

Shawn D. Lochinger
slochinger@sweetstevens.com

It is clear and unmistakable that students who are receiving special education services must be educated in the least restrictive environment possible. This means the law not only favors, but also *requires* that students be educated in an environment that includes as many non-disabled peers as possible. While this has been the standard for more than a few decades, a recent hearing officer decision shows that school districts still need to be aware that the law requires schools to *seriously* consider all possibilities for keeping the student in the least restrictive environment possible.

More parents (and parent attorneys) are forcing school districts to pay attention to this responsibility as inclusion again becomes a "hot topic" in school settings. The law that guides districts in this regard is relatively straightforward. Specifically, hearing officers seek to determine whether the child can be educated satisfactorily in the regular education setting with supplementary aids and services. *Oberti by Oberti v. Board of Educ. of Borough of Clementon Sch. Dist.* 995 F.2d 1204 (3d Cir. 1993). If the student can be educated in such a setting, it is then required.

Hearing officers use a three-part test to determine whether a student can, in fact, be educated in a regular classroom. First, has the agency given "serious consideration" to utilizing the full continuum of supplementary aids and services? Second, what are the comparative educational benefits that the child can receive in the regular education setting, particularly considering the benefits of learning social and communication skills in the general education context? Third, is the child's behavior in the regular education setting so disruptive that the child is not benefitting and the behavior is interfering with the education of the other children in the general education setting? While behavior is often cited as a reason to *not* include the student, hearing officers actually attempt to determine if supplementary aids and services would have prevented the negative behaviors. If so, then hearing officers can determine that the behavior does not warrant removal from the regular education environment.

The driving issue in the latest decision is whether the district gave "serious" consideration to keeping the student in a regular education environment. In *D.L. v. Warren County School District* 19319-16-17 KE (2018), the hearing officer held that there was no clear evidence that the district, when making placement decisions for a student to remain in a mostly self-contained life skills classroom, considered additional aids and services such as providing a one-to-one educational paraprofessional; modifying the general education curriculum through essentialization; or utilizing a co-teaching classroom model to permit greater differentiation of instruction. The hearing officer thus determined that the district did not give "serious" consideration to keeping the student in a less restrictive placement and, as a result, found against the district. Perhaps of more concern is the fact that because of this failure, the hearing officer ordered *specific* compensatory education in the form of daily direct instruction in reading and math, a 1:1 full time aide, an IEE, and a requirement that the Bureau of Special Education be directly involved in the IEP process moving forward. All of this constitutes a heavy price to pay for not seriously considering all options to educate the student in a regular education setting. Districts are thus urged to look anew at this old problem that seems to have new "legs" once again.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.