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# LRE Under the IDEA: Has Mainstreaming Gone Too Far?

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## **I. Introduction**

Over the past few centuries, several steps have been taken in order to integrate mentally handicapped and special education children into “normal” classrooms. What this paper will do is first take an in-depth look at how the Individuals with Disabilities Education Act (IDEA) was developed. Specifically, this paper will delve into the background and development of the IDEA and the Least Restrictive Environment (LRE) in order to give a background and history of this very important act.

The paper will then discuss the arguments for and against mainstreaming children with disabilities, as well as offer case studies on the topic. Lastly, this paper will discuss several important case decisions in the United States regarding the IDEA and the LRE that provide valuable “tests”, followed by an analysis and conclusion based on the following research. The conclusion will take a look at a personal experience in order to serve as a real-world example of mainstreaming under the IDEA and the LRE.

## **II. The Background and Development of the IDEA and the LRE**

During the 1950s and the 1960s, the government began to recognize, develop, and validate practices for children with disabilities and their families.<sup>1</sup> These practices eventually led

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<sup>1</sup> US Office of Special Education Programs, *History in Educating Children with Disabilities under the IDEA*, 2013, available at <http://www2.ed.gov/policy/speced/leg/idea/history.pdf>, (last visited May 2, 2013).

to the implementation of effective programs and services of early intervention and special education in states and localities across the country.<sup>2</sup>

Several of these advancements included the 1958 Captioned Films Act, Public Law 85-905, and the Professional Personnel Act of 1959, Public law 86-158.<sup>3</sup> These acts increased the amounts and types of training leaders received in learning how to educate children with mental disabilities.<sup>4</sup> The Elementary and Secondary Education Act, Public law 92-424, and State School's Act, Public law 89-313, were both passed by Congress in 1965.<sup>5</sup> Both of these gave states grant assistance for educating children with disabilities.<sup>6</sup> Following these, there were a few cases that focused on the education of these children.

The first of these cases was *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania*.<sup>7</sup> This case was a landmark case in the U.S. Supreme Court in 1971 that eventually extended universal public education laws to mentally handicapped children as a constitutional right.<sup>8</sup> In this case, PARC argued that all children with mental disabilities can benefit from an education program of some type and that by guaranteeing by law free public education to all children, the state must also provide such education to mentally handicapped children.<sup>9</sup> The Court realized that it had violated Fourteenth Amendment right to due process by denying one section of the population a right that is guaranteed to the rest of the people, and,

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Pennsylvania Assoc. for Retarded Children v. Commonwealth of Pennsylvania*, 343 Fed. Supp. 279 (1971).

<sup>8</sup> Encyclopedia of American Education, *American Education*, 2011, available at <http://american-education.org/1511-pennsylvania-association-for-retarded-children-v-commonwealth-of-pennsylvania-parc-decision.html>, (last visited May 2, 2013).

<sup>9</sup> *Id.*

therefore, agreed to give mentally disabled children an appropriate, free, public education program.<sup>10</sup>

The next case of importance to this matter was brought about a year later. This case, *Mills v. District of Columbia Board of Education*<sup>11</sup> ordered the Board of Education of the District of Columbia to provide free and appropriate public education to children with disabilities no matter what their disability.<sup>12</sup> These two cases, *PARC* and *Mills*, began Congress's focus of the Education for All Handicapped Children Act of 1975.<sup>13</sup>

Public law 94-142, also known as the Education for All Handicapped Children Act of 1975, guaranteed a free, appropriate public education to each child with a disability in every state and locality across the country.<sup>14</sup> The law had four purposes: first, "to assure that all children with disabilities have available to them a free appropriate public education which emphasizes special education and related services designed to meet their unique needs"<sup>15</sup>; second "to assure that the rights of children with disabilities and their parents are protected"<sup>16</sup>; third "to assist States and localities to provide for the education of all children with disabilities"<sup>17</sup>; and fourth "to assess and assure the effectiveness of efforts to education all children with disabilities".<sup>18</sup>

Public law 94-142 was adopted in response to a concern for two main groups: children with disabilities who were excluded entirely from the education system, and children with disabilities who had only limited access to the education system and were therefore denied an

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<sup>10</sup> *Id.*

<sup>11</sup> *Mills v. Board of Education*, 348 F.Supp. 866 (D. DC 1972).

<sup>12</sup> See US Office of Special Education Programs, *supra* note 1.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Public Law 94-142 (1975).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

appropriate education.<sup>19</sup> It was amended several times. The 1983 and 1990 amendments to the EHA changed the name of the EHA to the IDEA.

### **III. The Sections of the IDEA**

The IDEA is comprised of many different sections. For our concerns here, the IDEA states that a state is eligible for assistance if the state submits a plan that provides assurance to the secretary that the state has in effect policies and procedures to ensure that it meets each one of the conditions it then goes on lists.<sup>20</sup> The first of those conditions is free appropriate public education. A free appropriate public education is available to all children with disabilities residing in the state between the ages of three and twenty one, inclusive, including children with disabilities who have been suspended or expelled from school.<sup>21</sup>

The next condition the state must meet is establishing a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.<sup>22</sup> The third condition is that all children with disabilities who are homeless or wards of that state or children with disabilities attending private school who are in need of special education and related services are identified, located, and evaluated.<sup>23</sup> A practical method must then be developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.<sup>24</sup> A state must also develop an individualized

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<sup>19</sup> See US Office of Special Education Programs, *supra* note 1.

<sup>20</sup> Individuals with Disabilities Education Act (2004).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

education program, or an individualized family service plan, is developed, reviewed, and revised for each child with a disability.<sup>25</sup>

The fifth condition is the condition of most focus here. That condition is entitled the “Least Restrictive Environment”.<sup>26</sup> What this condition stands for is the proposition 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.<sup>27</sup> It also entails 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 of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.<sup>28</sup> Additionally, a state funding mechanism shall not result in placements that violate the requirements above, and a state shall not use a funding mechanism by which they distribute funds on a basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child’s IEP.<sup>29</sup>

The Least Restrictive Environment aspect continues to provide that if the state does not have policies and procedures to ensure compliance with the above, that state will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.<sup>30</sup>

In summary, the IDEA requires that to the maximum extent appropriate children with disabilities, including those children in public or private institutions or other care facilities, are

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

educated with children who are not disabled, and that special classes separate schooling, or the removal of children with disabilities from the regular educational environment in regular classes only occurs when the use of supplementary aids and services cannot be achieved satisfactorily.<sup>31</sup> The LRE under the IDEA requires that students with disabilities receive their education in the general education classroom to the maximum extent appropriate, or when the general education setting is not appropriate, in a setting with the least amount of segregation from a student's nondisabled peers.<sup>32</sup>

To break it down even further, there are basically two requirements. The first requirement is that students with disabilities be educated with nondisabled students in the general education setting to the maximum extent appropriate.<sup>33</sup> The second prong is that students with disabilities cannot be removed from the general education setting unless education in those settings cannot be achieved satisfactorily.<sup>34</sup> The first prong ensures that students with disabilities are educated in the LRE that is suitable for their needs.<sup>35</sup> The second prong implies that school districts should assume that students with and without disabilities should be educated together to the greatest degree possible, and, when that education is not appropriate either for the students or for his/her peers, the school district may move the student to a more restrictive setting.<sup>36</sup>

The general education environment is considered the least restrictive setting because this is the placement in which there is the greatest measure of opportunity for proximity and communication with the ordinary flow of students in schools.<sup>37</sup> The less a placement resembles

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<sup>31</sup> National Dissemination Center for Children with Disabilities, *Extent of Non-Participation*, (2010) available at <http://nichcy.org/schoolage/iep/iepcontents/participation>, (last visited May 2, 2013).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> M.L. YELL, *THE LAW AND SPECIAL EDUCATION*, (2006).

the general education environment, the more restrictive it is.<sup>38</sup> Therefore, the IDEA requires that educators make good faith efforts to place and maintain students with disabilities in less restrictive settings.<sup>39</sup> This is referred to as a presumptive right.<sup>40</sup>

#### IV. Both Sides of the Argument

An article written by Richard Flagel in 1994 does both sides of the argument justice.<sup>41</sup> Advocates for mainstreaming will argue six main points: (1) that it is nearly impossible to achieve socialization in abnormal settings; (2) that instruction and training given in segregated settings do not prepare students for participating in integrated settings; (3) that regular education teachers trained in mainstreaming techniques will be more effective in dealing with non-disabled students having exceptional problems; (4) that special needs students who have not been given special education labels already are in regular classrooms; (5) that mainstreaming can help special education student develop self-confidence, new skills, and greater independence; (6) that mainstreaming can help non-disabled students appreciate individual differences and become comfortable with disabled students.<sup>42</sup>

The article continues to discuss the seven main arguments against mainstreaming: (1) not every disabled student can benefit from mainstreaming; (2) if not done well, mainstreaming may result in greater prejudice, stereotyping, and rejection of a disabled students; (3) placing a

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<sup>38</sup> *Id.*

<sup>39</sup> Mark L. Sundberg, *Preparing a Child for Transitions to Less Restrictive Educational Settings*, 2013, available at [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CDwQFjAC&url=http%3A%2F%2Fwww.marksundberg.com%2Ffiles%2FTransitions\\_CAL\\_ABA.pptx&ei=mkVnUf\\_Eq2o4APms4DIDQ&usg=AFQjCNHmGg-wYzvS7GynsSQCVjxvIATg\\_w&sig2=CJ7BXwsDEVdowIOUxCwWYg&bvm=bv.45107431,d.dm](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CDwQFjAC&url=http%3A%2F%2Fwww.marksundberg.com%2Ffiles%2FTransitions_CAL_ABA.pptx&ei=mkVnUf_Eq2o4APms4DIDQ&usg=AFQjCNHmGg-wYzvS7GynsSQCVjxvIATg_w&sig2=CJ7BXwsDEVdowIOUxCwWYg&bvm=bv.45107431,d.dm), (last visited May 2, 2013).

<sup>40</sup> *Id.*

<sup>41</sup> Richard Flagel, *Raven's Guide to Special Education*, 1994, available at <http://www.seformmatrix.com/raven/raven8.htm>, (last visited May 3, 2013).

<sup>42</sup> *Id.*

disabled student in a regular classroom without adequate support may demand so much teacher attention that other students will be neglected; (4) large class sizes interfere with the ability of regular teachers to meet the needs of both disabled and non-disabled students; (5) mainstreaming is being forced through legal actions without considering the appropriateness of the placement; (6) many regular teachers are poorly prepared to meet the needs of disabled students placed in their classrooms; (7) many administrators do not provide adequate support to regular teachers receiving disabled students.<sup>43</sup>

With both of these sides of the argument in mind, the next section will discuss several studies that attempt to answer the question of whether mainstreaming has been successful or has gone too far.

## **V. Has Mainstreaming Been Successful?**

A study of preschool children by a professor of rehabilitation medicine at New York University has helped to understand whether mainstreaming handicapped children in regular classrooms enhances their social and intellectual development.<sup>44</sup> As discussed above, the Education of All Handicapped Children Act of 1975 required public schools to place these children in the least restrictive environment on the ground that this would enable these children to be friends with and learn with their peers.<sup>45</sup> The thought behind this was that these handicapped children would have increased confidence and enhance their ability to learn.<sup>46</sup>

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<sup>43</sup> *Id.*

<sup>44</sup> Sharon Johnson, *Special Education: Dissent on Mainstreaming*, N.Y. Times, Apr. 26, 1981.

<sup>45</sup> Individuals with Disabilities Education Act (2004).

<sup>46</sup> See Johnson, *supra* Note 44.

Ronnie Gordon, associate professor of rehabilitation medicine and director of preschool and infant developmental programs at New York University Medical Center, said, “at best, mainstreaming has somewhat increased the social interaction of handicapped children and normal children.<sup>47</sup> But at worst, it has kept the handicapped from developing their intellectual capabilities because it has deprived them of the individual attention that they need.”<sup>48</sup>

These findings by Professor Gordon were challenged by Jerry C. Gross, architect of the New York City Board of Education Program under which the number of mainstreamed children in city schools has now reached 7,000 in the last two years.<sup>49</sup> According to Gross, there have been no studies that show that handicapped children enrolled in special education classes do any better than children enrolled in mainstream classes.<sup>50</sup> He also believes that one reason they do not is that special education classes deprive handicapped children of normal peers from whom they can learn ways of behaving.<sup>51</sup> He conceded that special classes are required for severely handicapped students, and added that from his observations, mildly handicapped children enrolled in mainstream classes developed more skills than some mildly handicapped children enrolled in special-education classes.<sup>52</sup>

There have been several other studies that have shown that mainstreaming can have a positive effect on the social acceptance of handicapped children. One took place at the University of Minnesota where hearing-impaired children were integrated into regular nursery school classes by age three and regular public school classes by age six.<sup>53</sup> “Children suffering from hearing impairment have the ability to live full and productive lives in the same way as

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

other children”.<sup>54</sup> This study showed that their acceptance by other children did not differ from acceptance of normal peers.<sup>55</sup>

However, Ronnie Gordon’s study, which was supported by \$250,000 in grants from the Department of Health, Education and Welfare, followed the progress of fifty preschool handicapped and normal children for two years after they had been placed in five educational programs in New York City.<sup>56</sup> The children ranged in age from three to six and included children with cerebral palsy and the blind, as well as those with less serious physical disabilities.<sup>57</sup> The class sessions were tape-recorded, and observers noted how they interacted with one another and with their teachers and how they used educational materials such as puzzles.<sup>58</sup> The study also included a range of children from various socioeconomic, ethnic and racial backgrounds.<sup>59</sup>

What was found by Professor Gordon was that the often-stated goals of mainstreaming did not occur.<sup>60</sup> She reported that the handicapped children in both the mainstreamed and segregated classes interacted less with their peers than did non-handicapped children.<sup>61</sup> She also reported that the handicapped children spent most of their time in the classroom interacting with the teachers and the materials than with their peers.<sup>62</sup> She noted that the handicapped children, being less mature and having fewer experiences than the normal children of the same age, were often inappropriate in their interactions.<sup>63</sup> However, there have been advances in so-called “inappropriate behavior” by using the Treatment and Education of Autistic and Related

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<sup>54</sup> Hear-it, *Teaching Hearing-Impaired Children*, 2013, available at <http://www.hear-it.org/Teaching-hearing-impaired-children>, (last visited May 9, 2013).

<sup>55</sup> See Johnson, *supra* Note 44.

<sup>56</sup> Ronnie Gordon, Pilot Study of the Efficacy of Mainstreaming Handicapped Children, 1978, available at [http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?\\_nfpb=true&\\_ERICExtSearch\\_SearchValue\\_0=ED165387&ERICExtSearch\\_SearchType\\_0=no&accno=ED165387](http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=ED165387&ERICExtSearch_SearchType_0=no&accno=ED165387), (last visited May 9, 2013).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> See Johnson, *supra* Note 44.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

Communication-Hand Method (TEACCH).<sup>64</sup> The TEACCH technique was developed upon the observation that handicapped children interact and connect differently than other children and that these behaviors are a misunderstanding of the handicapped child of what is expected of him or her.<sup>65</sup>

Most importantly, Ronnie Gordon's research questioned the assumption that mainstreaming enhances the intellectual development of the handicapped because it "gives them an opportunity to work with normal children".<sup>66</sup> Instead, the researchers found that although mainstreamed children interacted more with materials than did those in specialized settings, they were less likely to complete tasks involving these materials or to use them in imaginative ways as were the handicapped in specialized classes.<sup>67</sup>

"The only group of children in our pilot study who didn't make gains in intellectual development were the handicapped who were mainstreamed," Professor Gordon said.<sup>68</sup> Those in mainstreamed classes, she continued, "tended to hold materials but not use them and to carry out tasks only if the teachers had specifically directed the child's actions step by step."<sup>69</sup>

Professor Gordon's research also concluded that despite the general support of mainstreaming, parents of handicapped children in both integrated and segregated classes favored mainstreaming only when it could be planned to meet the particular needs of their specific child. Many parents said that they preferred the smaller special-education classes led by

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<sup>64</sup> Bright Tots, *TEACCH: Treatment and Education of Autistic and Related Communication-Hand Method*, 2013, available at [http://www.brighttots.com/TEACCH\\_Method\\_autism](http://www.brighttots.com/TEACCH_Method_autism), (last visited May 9, 2013).

<sup>65</sup> *Id.*

<sup>66</sup> See Johnson, *supra* Note 44.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

specially trained teachers.<sup>70</sup> However, other studies have concluded that parents prefer mainstreaming their children.<sup>71</sup>

Gordon referred to the recent commitment to mainstreaming a "right that has been distorted".<sup>72</sup> In many cases, she said, the decision to place these handicapped children in mainstream classrooms has only been a way of avoiding putting fiscal strain on already overstrained educational budgets.<sup>73</sup> Handicapped children are sometimes referred to mainstreaming too fast without much analysis and respect for their feelings or their parents' feelings.<sup>74</sup>

In a similar study performed by Michael Guralnick, a psychology professor at Ohio State University, the study showed that mainstreaming for preschoolers would be more beneficial if there were more than one or two handicapped students in each classroom.<sup>75</sup> "Mainstreaming seems to work if the class comprises 20 to 30 percent handicapped," he said.<sup>76</sup> "With one or two handicapped children, there is a tendency of the handicapped and their parents to be isolated."<sup>77</sup>

A third study looked instead at the emotional reactions and self-perception of children with learning disabilities in a mainstreamed classroom.<sup>78</sup> According to the study, determining how the integration affects students requires exploring variables associated with emotional cognition. Emotional cognition is a term that refers to a variety of processing patterns involved in

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<sup>70</sup> *Id.*

<sup>71</sup> Jan Hewson, *Parents Prefer Inclusion: The Views of Parents of Children with Special Educational Needs in One Mainstream Nursery School*, 1996, available at <http://www.tandfonline.com/doi/abs/10.1080/0957514960170106#preview>, (last visited May 9, 2013).

<sup>72</sup> See Johnson, *supra* Note 44.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Sara Dickson, *Self-Perception of Learning Disabled Children Within Mainstream Classrooms*, 2008, available at [http://www.capital.edu/uploadedFiles/Capital/Academics/Services\\_and\\_Programs/Undergraduate\\_Research/Epistimi/Content/Self-Perception%20of%20Learning%20Disabled%20Children%20within%20Mainstream%20Classrooms.pdf](http://www.capital.edu/uploadedFiles/Capital/Academics/Services_and_Programs/Undergraduate_Research/Epistimi/Content/Self-Perception%20of%20Learning%20Disabled%20Children%20within%20Mainstream%20Classrooms.pdf), (last visited May 3, 2013).

the activation, modulation and use of emotions in social interactions.<sup>79</sup> By the age of three, most children have learned to recognize and identify emotions, such as happy and sad. During the middle of a childhood, recognition of social emotions arises.<sup>80</sup> Social emotions can include feelings of guilt and shame and are typically influenced by interactions with others.<sup>81</sup>

It is a widely accepted that children with learning disabilities are at a much higher risk than normal children in mainstream classrooms for social rejection.<sup>82</sup> In one last study, learning disabled students were observed in relevance to seven categories: rejection, request for information and materials, self-image, helping and cooperation, positive reinforcement, egocentric/self-comments and reactivity.<sup>83</sup> The researchers believed that because the students are labeled as learning disabled children, they tend to lash out using vulgar words while also experiencing rejection from their normal peers. This points to the fact that having learning disabled children in a classroom can significantly change the dynamics of the room.<sup>84</sup>

At the conclusion of the study, the researchers felt that the learning disabled students tended to be overlooked in the academic classroom, as well as causing these students stress and anxiety.<sup>85</sup> The teachers who were less trained in how to handle a mainstreamed classroom did not know how to handle the students in an appropriate manner.<sup>86</sup>

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

## VI. Cases in the U.S. and Prevailing Tests

Cases in the United States have touched on several aspects of the IDEA and the LRE. The most important factor of these cases are the different types of tests that have emerged in different circuits from them.

### i. The *Daniel RR* Test

One of the tests that emerged from case law is known as the *Daniel RR* test. This test is thoroughly discussed and adopted in *LB v. Nebo School District*<sup>87</sup> and has been applied in the third, fifth, and eleventh circuits. The Court of Appeals in *Nebo* adopted this already existing test to be used to determine whether or not a school district had met the IDEA's least restrictive environment requirement.<sup>88</sup> This standard had been previously adopted in *Daniel R.R. v. Board of Education*<sup>89</sup> decision.<sup>90</sup> As a background to the *Nebo* case, parents of an autistic child were seeking payment and placement in an integrated private preschool.<sup>91</sup> They were seeking this type of placement because they felt that the integrated preschool was "less restrictive and educationally superior to placement in a public preschool that primary served students with disabilities."<sup>92</sup>

When discussing the issue of LRE, the *Nebo* court stated, "educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA's

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<sup>87</sup> *L.B. v. Nebo School District*, 379 F.3d 966 (10th Cir. 2004).

<sup>88</sup> Randy Chapman, *Tenth Circuit Adopts Least Restrictive Environment Standard*, 2004, available at <http://www.cde.state.co.us/early/downloads/Tenth%20Circuit%20Adopts%20Least%20Restrictive%20Environment%20Standard.pdf>, (last visited May 9, 2013).

<sup>89</sup> *Daniel R.R. v. Bd. Of Education*, 874 F.2d 1036 (5th Cir. 1989).

<sup>90</sup> See Chapman, *supra* Note 88.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

most important substantive requirements.”<sup>93</sup> The court continued to describe the LRE requirement as a “specific statutory mandate” and not “a question about educational methodology”.<sup>94</sup> The court, in looking for an appropriate LRE test to adopt, rejected the *Roncker* LRE test, which will be discussed below.<sup>95</sup>

In *Daniel RR*<sup>96</sup>, Daniel was a six year old boy who had been identified as a moderate special education child.<sup>97</sup> Although six, he was at a three year old developmental level.<sup>98</sup> Daniel’s Pre-Kindergarten teacher said Daniel needed constant supervision, and, therefore, Daniel was moved to a full-time special education setting.<sup>99</sup>

Daniel’s parents requested a hearing “because they wanted him in the regular education classroom as much as possible.”<sup>100</sup> The Court found that Daniel was receiving no education benefit in the regular classroom, and, therefore, the court agreed with the school.<sup>101</sup> The Fifth Circuit Court of Appeals announced a two-prong test that asks two questions: (1) can education in the regular classroom, with the use of supplemental aids and services, be achieved satisfactorily?; and (2) if not, has the school mainstreamed the child to the maximum extent appropriate?<sup>102</sup> The fifth Circuit Court of Appeals agreed with the prior decisions because the answer to the first prong of the test was “No.”<sup>103</sup>

Since the parents in *Nebo* were arguing that the LRE is also educationally superior, the 10<sup>th</sup> circuit looked to the *Daniel RR* test because that test “better tracks the language of the IDEA’s least

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<sup>93</sup> Citing *Murray v. Montrose County Sch. District*, 51 F.3d 921 at 926 (10th Cir. 1995).

<sup>94</sup> See Chapman, *supra* Note 88.

<sup>95</sup> *Id.*

<sup>96</sup> *Daniel RR v. State Bd. Of Education*, 874 F.2d 1036 (1989).

<sup>97</sup> Inclusion, *Daniel RR v. State Board of Education*, 1989, 2011, available at <http://schoolinclusion.blogspot.com/2011/06/daniel-rr.html>, (last visited May 9, 2013).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

restrictive environment requirement and is applicable in all cases.”<sup>104</sup> The *Nebo* court then continued on to explain the two-step *Daniel RR* test in which they are going to adopt.<sup>105</sup>

The *Nebo* court continued on to outline four factors that should be considered when determining the first part of the test: (1) steps the school district has taken to accommodate the child in the regular classroom, including the consideration of a continuum of placement and support services; (2) comparison of the academic benefits the child will receive in the regular classroom with those she will receive in the special education classroom; (3) the child’s overall education experience in regular education, including non-academic benefits; and (4) the effect on the regular classroom of the disabled child’s presence in that classroom.<sup>106</sup>

The parents in *Nebo* voluntarily and at their own expense, placed their daughter in a private school in order to allow her to attend school without children with disabilities.<sup>107</sup> The parents believed this to be less restrictive or a more mainstreamed setting because the school district “did not have a mainstreamed preschool and had offered a placement in a school that primarily served students with disabilities, although some students without disabilities also attended the school.”<sup>108</sup> Only students without disabilities attended the private school chosen by the parents.<sup>109</sup>

The court case itself came about because the parents were providing their daughter with an at-home Applied Behavioral Analysis program.<sup>110</sup> Behavioral analysis focuses on how the idea of learning actually takes place.<sup>111</sup> One example of this is “positive reinforcement” because when a certain behavioral trait is rewarded, it is more likely that that characteristic will reoccur.<sup>112</sup> Applied Behavior Analysis is “the use of these techniques and principles to bring about meaningful and

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<sup>104</sup> See Chapman, *supra* Note 88.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *L.B. v. Nebo School District*, 379 F.3d 966 (10th Cir. 2004).

<sup>108</sup> See Chapman, *supra* Note 88.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Autism Speaks, *Applied Behavioral Analysis (ABA)*, 2013, available at <http://www.autismspeaks.org/what-autism/treatment/applied-behavior-analysis-aba>, (last visited May 9, 2013).

<sup>112</sup> See Chapman, *supra* Note 88.

positive change in behavior.”<sup>113</sup> The school district agreed to pay for part of the daughter’s ABA program, but not all of the program, and, because it was shown that the ABA program was effective, the 10<sup>th</sup> circuit ruled in favor of the *Nebo* parents based on the *Daniel RR* test.<sup>114</sup>

## ii. The *Roncker* Test

The *Roncker* test is applied in the Fourth, Sixth, and Eighth Circuits.<sup>115</sup> The *Nebo* Court describes the *Roncker* test as appropriate in cases “where the more restrictive placement is considered a superior educational choice”.<sup>116</sup> The *Roncker* test evaluates the LRE by the benefits the child would receive in special education settings compared to regular education settings.<sup>117</sup> It also considers whether the child would be disruptive, while also looking at the cost of mainstreaming.<sup>118</sup>

The *Roncker* test is basically a portability test where “if the services that make a more restrictive setting superior can be transferred to a less restrictive setting, such modification may be required.”<sup>119</sup> Therefore, the court explained, the *Roncker* test is not suitable for cases where the LRE happens to also be the superior educational choice.<sup>120</sup>

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<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *L.B. v. Nebo School District*, 379 F.3d 966 (10th Cir. 2004).

<sup>116</sup> *Id.*

<sup>117</sup> Hensel, *IDEA: Fape and Related Services*, 2008, available at <http://law.gsu.edu/whensel/dis8eve.pdf>, (last visited May 9, 2013).

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> See Chapman, *supra* Note 88.

### iii. The *Rachel H.* and *Hartman* Tests

Notably, there are two other tests that stemmed from similar cases in other circuits. The first of these tests is referred to as the *Rachel H.* test from the ninth circuit.<sup>121</sup> The *Rachel H.* test consists of four points: (1) what the educational benefits of regular classrooms versus special classrooms are; (2) what the non-academic benefits of regular classrooms versus special classrooms are; (3) the effect of the student on the education of others; and (4) the cost of mainstreaming.<sup>122</sup>

The last test is referred to as the *Hartman* test and stems from a fourth circuit decision.<sup>123</sup> The *Hartman* test is a three part test that says mainstreaming is not required when: (1) a student with a disability would not receive educational benefits; (2) any marginal benefit from mainstreaming is significantly outweighed by benefits in a separate setting; or (3) the student is a disruptive force in the classroom.<sup>124</sup>

## VII. Analysis and Conclusion

The idea of mainstreaming children with learning disabilities has been widely debated. The main question of focus is whether the least restrictive learning environment is the right environment for every student with a learning disability. The wide range of learning disabilities play a huge role in making it extremely difficult to place these children accurately and timely.

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<sup>121</sup> Pearson Education, *Least Restrictive Environment*, 2006, available at [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDYQFjAB&url=http%3A%2F%2Fwww.ed.sc.edu%2Fspedlaw%2FPresentations%2FChapter12\\_LRE.ppt&ei=g-qLUaObj-PD0QG25YAQ&usg=AFQjCNHPQeLuA5G1bq9ovnE4w3luFbLrhw&sig2=5-4zh2cEzTjzu0mTzqtdxA&bvm=bv.46340616,d.dmQ](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDYQFjAB&url=http%3A%2F%2Fwww.ed.sc.edu%2Fspedlaw%2FPresentations%2FChapter12_LRE.ppt&ei=g-qLUaObj-PD0QG25YAQ&usg=AFQjCNHPQeLuA5G1bq9ovnE4w3luFbLrhw&sig2=5-4zh2cEzTjzu0mTzqtdxA&bvm=bv.46340616,d.dmQ), (last visited May 9, 2013), citing M.L. YELL, *THE LAW AND SPECIAL EDUCATION*, (2006).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

The tests provided by the different circuits certainly act as a guide to how mainstreaming situations should be assessed, however, considering the difference in the tests, it is difficult to ascertain which test would be of most value.

The studies seem to show that mainstreaming has been widely unsuccessful in many situations. As a teacher at a private special education school, I see and work with these children daily. I watch these children work one-on-one with teachers and advance in academics far beyond what they would have ever been expected to be. However, the State continues to take these children out of our school and move them into public schools. Once taken out of a special education setting and placed in the public school system, we usually never see the children again.

However, in the case of one girl, I had the unfortunate opportunity of seeing her leave a special education setting and be mainstreamed into public school, only to, thankfully, return back to our special education classroom. For confidentiality purposes, her actual name will not be utilized and instead she will be referred to as Claire.

Claire is an 11 year old special education student. She resides in Irvington with her mother and has a father who is no longer in the picture. Claire has been, and continues to be, a student at my special education school for the past six years. Upon first meeting Claire, the average person would not be aware that she is considered a special education student. She does not act inappropriately, nor does she speak, communicate, or walk with any type of impediment.

Claire, although a seemingly typical eleven year old, has a severe learning disability in which she cannot retain information. She enters school in the morning not knowing how to spell her own name, leaves at the end of the day knowing how to spell not only her own name, but the names of all the students in the classroom, and then returns the following school day with no recollection of what she learned the day before.

In mid-winter of this past year, representatives from the State arrived unannounced in our classroom at the end of the school day. At this point, Claire had been retaught how to spell her name and the names of her classmates. The representatives spent less than five minutes in the classroom watching Claire work with me one-on-one before making the decision that Claire would “be fine” in a mainstream setting, and, just like that, Claire was gone at the start of the Spring semester.

Claire’s mother fought the State and the school system until Claire was returned back to our special education setting. Her mother revealed to us that Claire, not even being able to write her own name, was being mainstreamed into classes with children reading short stories and learning literary terms that were far beyond her educational reach. Not only was this frustrating for Claire, but it had a large impact on Claire socially as well as she was constantly humiliated by classmates and even teachers.

Claire is only one child out of millions who are unfairly and unsuccessfully mainstreamed. Not only does my own personal experience lean the opposite way of mainstreaming, but the studies that are conducted on mainstreaming these children prove that mainstreaming is not always the best way for a child with a mental disability to prosper. These children are often overlooked and ironically “left-behind” in a regular classroom setting more so than in a special education setting.