



2016-06-01

# An Analysis of Due Process Hearings Involving Students with Significant Disabilities in Their Least Restrictive Environment

Wendy Seiter Nichol  
*Brigham Young University*

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An Analysis of Due Process Hearings Involving Students with Significant Disabilities  
in Their Least Restrictive Environment

Wendy Seiter Nichol

A dissertation submitted to the faculty of  
Brigham Young University  
in partial fulfillment of the requirements for the degree of

Doctor of Philosophy

Scott Ellis Ferrin, Chair  
A. LeGrand Richards  
Betty DeVone Ashbaker  
E. Vance Randall  
Clifford Thomas Mayes

Department of Educational Leadership and Foundations

Brigham Young University

June 2016

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## ABSTRACT

### An Analysis of Due Process Hearings Involving Students with Significant Disabilities in Their Least Restrictive Environment

Wendy Seiter Nichol

Department of Educational Leadership and Foundations, BYU

Doctor of Philosophy

This research analyzed all available hearings from 2013 to 2015 in a national database of due process hearings regarding placement issues and determinations of the least restrictive environment for individual students with significant disabilities. The main research question was whether parents/guardians and due process hearing officers sought placements for these children with significant disabilities that considered creatively and holistically a range of options rather than just a dialogue between already extant possible programmatic offerings. The research resulted in a description and taxonomy of the types of issues and factors arising in the hearings for students with significant disabilities from 2013 to 2015. This research shows almost no evidence of creative or holistic thinking in these due process decisions, and there was little evidence of parent advocacy for general education classes and creative options for their students with significant disabilities beyond existing offerings. The most unique placements to be found in public school settings for these students were in general education classes. Twenty-four students in this analysis were offered general education classes with their typically achieving peers. In general, though, for this unique group of students with significant disabilities, very few due process hearings could be found to have demonstrated creativity, or the consideration of holistic options, for such students. In general, in due process hearings for students with significant disabilities from 2013 to 2015, parents were overwhelming advocating for, and due process hearing officers were deciding among, options on the continuum of placements already traditionally considered for students with significant disabilities.

Keywords: least restrictive environment, significant disability, severe disability, multiple disabilities, autism, intellectual disability, placement, setting, environment, due process hearings

## ACKNOWLEDGMENTS

At different stages in my educational career, it has been my privilege to work with students with significant disabilities in elementary and secondary schools. I express my thanks to them for the many things they have taught me about themselves. Our Heavenly Father cares about all his children. I feel that this dissertation had to be finished to honor those who have great difficulty speaking for themselves. It has been my privilege to try to be their voice. It is my prayer that they may be blessed through this effort in some small way.

I also want to express gratitude to my chair. He has been unfailingly patient and interested in the progress I have made. He consistently gave constructive feedback mixed with reinforcement which kept me going. My committee also has my thanks for their useful pointers and interest in this topic. They have asked thoughtful questions to help me focus on what is important.

My family has been my greatest support. My children have been interested and encouraging observers and participants. My dear husband even more so. He has read and responded to many editions with sensitivity and attention. He has also prepared many meals to give me more time to analyze and write. I could not have finished without his support and encouragement. A great motivator has been to live up to the expectations of my family. I am eternally indebted to them.

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## DESCRIPTION OF DISSERTATION STRUCTURE

This dissertation, titled *An Analysis of Due Process Hearings Involving Students with Severe Disabilities in Their Least Restrictive Environment*, follows a hybrid format. A hybrid dissertation focuses on developing a journal-ready article while still including elements required for a traditional dissertation. This dissertation format is approved by the McKay School of Education at Brigham Young University. The hybrid format has fewer chapters but does include the review of literature, methods, and reference sections in appendices. This format focuses on producing a scholarly manuscript that the dissertation committee deems ready for publication.

The journal article for this hybrid dissertation targets the journal *Research and Practice for Persons with Severe Disabilities* (RPSD). This journal is published in association with TASH.<sup>1</sup> TASH is an organization that leads out in advocacy for those with disabilities. The format required by RPSD follows the American Psychological Association 6<sup>th</sup> edition format. Article length is 30 to 40 pages.

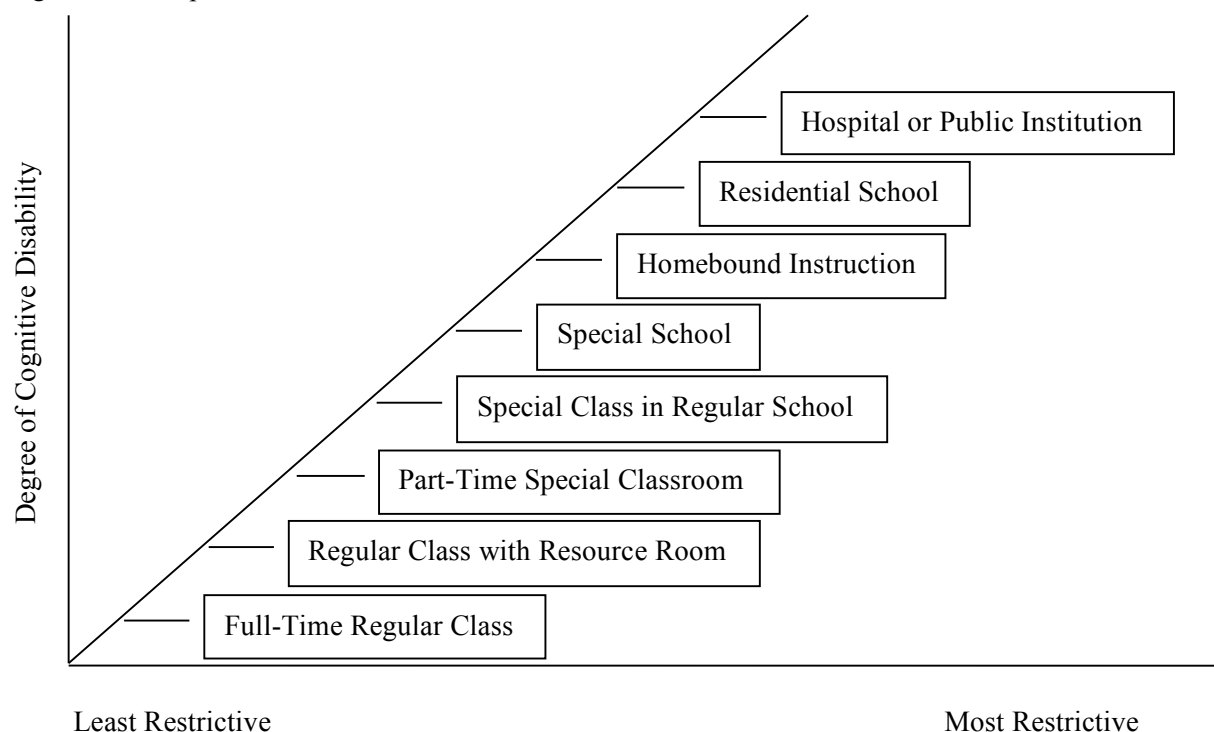
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<sup>1</sup> The official name of TASH has gone through several changes since its inception more than 35 years ago. In 1995, the Board of Directors voted to discontinue the full name of the organization as it did not reflect current values. The acronym, TASH, was maintained due to its wide recognition.

## Introduction

It has become apparent to me while working with and researching about students with significant disabilities (SD) that these wonderful people, at times, are not served creatively in our public school system. In the early 1960s, students with SD seldom had a place in our public schools. They were either schooled at home or sent to residential placements where they were educated all together. If the disability was severe, parents were encouraged to place their child in an institution or hospital. This way of educating students with SD was replaced by a different model. A seminal article by Reynolds (1962) reprinted in 2004 identifies a “continuum of placements.” These placements range from the most restrictive, a hospital or institution, to the least restrictive, a regular classroom in a public school (see Figure 1).

Figure 1. The Special Education Continuum



*Figure 1. The special education continuum. Adapted from “Caught in the Continuum: Critical Analysis of the Principle of the Least Restrictive Environment,” by S. J. Taylor, 2004, Research & Practice for Persons with Severe Disabilities, 29, p. 220. Copyright 2004 by TASH.*

This article sparked a significant change in thinking about the public education system and where students with SD fit. After the publication of this article, placements began to be designed along this linear continuum. Another step forward for students with SD occurred when the Education for All Handicapped Children Act (EAHCA) 20 U.S.C. 1400 passed in 1975. Perceptions about educating students with SD were changing. This law formalized the right for these students to be educated in the public schools. Public school environments were being designed to meet their needs. Finally, students with SD were finding a place in public schools.

Generic continuum-based thinking seems to have generated most educational placements for students with SD in the public school system. It is my opinion, however, that we should be outgrowing this model because it may limit placements for students with SD. Instead, we should be attending to a student's expressed desires, though they may be revealed unconventionally. These preferences, if attended to and fostered, can lead to the development of skills that provide employability or leisure-time options. Placement opportunities that provide students a choice about their own future promote individualized placements. This true individualization is not along a linear continuum that moves students lockstep toward some predetermined set of standards that have been unilaterally adopted as a one-size-fits-all solution to educating our diverse children.

### **Students with Significant Disabilities**

Students with significant disabilities usually have an intellectual disability as well, this includes students on the autism spectrum. Students with significant disabilities vary greatly, both from typically achieving students and from each other. One student who has a significant disability may look similar to and act more like a typical peer. They may be verbal and mobile. Another student with SD may be unable to move or speak. Because the range is so wide, a one-

size-fits-all educational setting fails to meet the diverse needs of these students. Characteristics vary greatly; however, each student has similar challenges when attempting to access a typical learning environment within a public school.

Students with SD are not accurately defined by numbers generated from normed assessments. Normed assessments best describe those whose scores place them under the bell curve within 15 points (plus or minus) of the mean, or 100. Those that lie further from the mean may or may not be accurately represented by the numbers they generate. Often, even for parents, it is difficult to get an accurate understanding of the intellectual abilities these students possess. When some students with SD are given normed intellectual assessments, they may not be able to produce a score at all. Even when they are given a nonverbal assessment, it may not be possible for a psychologist to get a measurement. These students' intellectual abilities may not be measurable because they are nonverbal, immobile, or both. This means that those who may have more typical intellect but cannot express it are not accurately identified. As far as educators are able to determine, these students have intellectual abilities well below their typically achieving peers. Because this appears to be so, sometimes educators have difficulty envisioning education settings that differ from their self-contained classroom where many students are educated all day. However, these students are often able to express preferences. Parents are important team members as educators learn the communication method of a student with SD.

### **Parents of Children with Significant Disabilities**

Many parents of students with SD have strong feelings about their child's educational environment, especially those parents who resort to due process (DP). Parents who access DP seeking redress for their child may not accurately represent all parents of students with SD. Those who access DP have the physical, emotional, and monetary means to pursue a hearing.

The cost is great in each area. It takes stamina for them to engage in the legal process. There is help for these parents through disability law centers located in most states if the parents have the perseverance to locate and use this resource.

An individualized education program (IEP), as identified in the law, is drafted by a team, which should be a cohesive partnership, where each aspect of a child's disability is represented. Team members, including parents, express their viewpoint from their area of expertise. They create a plan that offers an educational program beneficial to the student. Each team member is valuable because each brings unique information to the meeting. When parents or guardians of a student feel their offering is not valued, when the team becomes broken, the child is the one who pays the price. Due process hearings (DPHs) are used by parents of students with disabilities as a last-ditch effort to remedy what they feel are inappropriate placements for their child.

Parents of students with SD may not react the same way as parents of typically achieving students, simply because they are so overwhelmed with taking care of their child. School may provide the only respite care they get. These parents are so stretched mentally, physically, and emotionally that they do not have further means to seek redress for inappropriate placements. These parents care, but not knowing what is possible may hamper their efforts to get a more suitable placement for their child. Professionals can make educating students with SD easier by promoting emotional connections. Kayama (2010) notes, "empathy makes it possible for professionals to think about children and their needs from the viewpoint of parents and children and to identify their problems, including unexpected family stress on an ongoing basis" (p. 124). Because parents of students with SD are under greater stress, they may exhibit five different types of behavior when made aware of their child's disabilities. These five behavior types have been identified by Zentner and Smith (as cited in Weasmer & Woods, 2010, p. 129). They

include parents in denial, parents with a chip on their shoulder, parents who advocate, parents who are savvy, and parents who focus on equality not equity (see Table 1).

Table 1

*Parental Behavior Types Upon Discovery of Their Child's Disability*

Behavior Type	Description
Denial	Disbelief in the diagnosis. Diagnosis is recent.
Chip on Shoulder	Bitterness about diagnosis and school shortcomings. Commonly dissatisfied with services and child's performance.
Advocate	Versed in law. Eager to make advances for those with disabilities. Feel life mission is to advocate for rights and changes.
Savvy	Hire advocates or attorneys to forward issues important to them. Threaten district with due process and publicity if demands are not met.
Equality Not Equity	Push for mainstreaming into regular classroom despite the severity of child's disability.

*Note.* Adapted from "It Takes a Community," by J. Weasmer & A. M. Woods, 2010, *Kappa Delta Pi Record*, p. 129. Copyright 2010 by Kappa Delta Pi Record.

Parents of students with SD differ from parents of children with mild or moderate disabilities because they have the charge of caring for a child who may never progress developmentally beyond an infant stage. Caring for these children taxes parents and family units to a maximum extent. MacDonald & Hastings (2010) state, "mothers and fathers of children with intellectual disabilities experience different levels of psychological distress" (p. 236). Some of the difficulties parents deal with on a daily basis are feeding, toileting, and bathing these children. These students may resemble an infant in an adult-sized body. They may need to be bathed and clothed daily and spoon or tube-fed. They may have tantrums because they are unable to make their needs and wishes known. This description highlights the most severely impacted children in our society. However, children with SD vary, just as typically achieving students do.

These students range from this level of disability to students who may look and act more like a typical child their own age.

Parents of students with SD have the responsibility not only of daily care but also to see that these children receive the education they need and are entitled to. DPHs are pursued by parents who are able to look beyond the daily needs of the child with SD, their families, and themselves and who have the physical, intellectual, and emotional energy to pursue the course they feel is appropriate given their rights under the law. These parents are pursuing a course that will shape the education of other students with SD for parents who may not have the same physical, mental, emotional, and financial resources. Parents may feel that something is wrong in their child's placement but not be able to articulate their discomfort. If educators are not responsive by providing information about possible settings, parents may not ever be able to help educators make an informed decision about their child.

Parent preferences are exposed through DPHs and may be examined for whether parents and impartial hearing officers (IHOs) think beyond the continuum for opportunities to enrich the lives of students with SD. This idea is at the heart of my research question. Are parents and IHOs looking for placements that move beyond the *continuum of placements* model?

### **Continuum**

The *continuum of placements* model has consequences, both positive and negative. Because of Reynolds's continuum, environments within a public school system became available to students with SD. Previously, there were no available environments for these students. Reynolds (1962) identified the need for placements designed to accommodate students with SD and provided a starting point for public educators to begin devising environments to meet the needs of these distinctively different students. Reynolds's article proved to be catalytic. Great

strides were made for students with SD. The environments that became available followed Reynolds's continuum very closely. Students who looked and acted less typical were hospitalized, put in residential placements, had homebound services, or were educated in separate schools. Later, students who were in a regular public school may have been in a special self-contained class within the school, in a self-contained class for part of the day for core instruction, in a resource room where supplementary services were given, or in a general education (GE) classroom. This was progress.

The term *continuum of placements* and all it implies has become embedded in the practice of special education across the nation. Because this is so, it is possible that this term now limits placement options for students with SD. It gives educators the false impression that students are to be placed along this continuum. Rather than encouraging educators to think about individualizing placements educators may just select an option on the continuum. Students with SD are as diverse as their more typical peers and deserve the chance to develop their interests and abilities through an individualized education. Because of the linearity of the continuum, exposure to environments that help them explore interests and abilities are often limited. The limitations are artificial, unnecessary, and potentially negative. Limiting environments by underestimating the intellectual awareness of these students may doom them to a life of unrelieved boredom.

### **Educational Environments**

Environments within a public school vary. There seem to be three general types of settings accessible for students with SD. There are classes identified as core-curriculum classes and include math, English language arts, science, and social science. The second type comprises



practical and fine arts such as foods, wood shop, childcare, music, art, and PE. The final setting where students with SD encounter their peers is during recess, lunch, and transition to classes.

In some studies, researchers fail to identify the kind of inclusive setting where students with SD are educated. It is imperative that the setting be identified and defined so that better decisions can be made about how generalizable the research can be. Spooner, Dymond, Smith, & Kennedy (2006) identify a major difficulty with generalizing research on the least restrictive environment (LRE). They note that:

researchers might test a particular approach for providing access in the general curriculum, but if one defines the general curriculum as content area inclusive classes and the other defines it as instruction in a community setting on a life skill, then claims of the effectiveness of the approach will have limited utility if consensus does not exist about whether the curriculum is valid. (p. 280)

Two settings are identified in this quotation, including content-area-inclusive classes and a community setting. Students will have very different experiences when learning the same curriculum if they are taught in these two dissimilar settings.

Because the environment has such an impact on the experience students with SD have in general education settings, it is important to identify the type of setting students are in. There is no formal definition for these public school environments that I have uncovered in my research. However, because the type of setting or environment is so important to my study, I am proposing the following descriptions. As stated above, environments in a school setting seem to fall into three categories: structured (math, English language arts, science, and social science), semi-structured (fine and practical arts, career and technical education, and physical education), and unstructured environments (lunch, recess, and passing periods). Structured environments are

those where output is highly tested for proficiency. Semi-structured environments include settings where student proficiency may be based on growth from an entry-level to an exit-level proficiency. Unstructured settings are those where students are free to interact with each other without a great deal of adult intervention.

All of these environments can and should be open to students with SD, depending on student needs. Each environment can be appropriate for some or all students with SD, depending on what goals have been established by the IEP team. Carter, Sisco, Chung, & Stanton-Chapman (2010) state that “although current discussions of educational policies and practices often emphasize academic performance and accountability, the interactions children have with their peers play a central role in promoting learning, relationships, and quality of life” (p. 72). Because many educators follow the continuum and use previously designed placements, students with SD may be excluded from possible options. Students with SD need opportunities to model the appropriate behavior of typically achieving students, learn academic and life skills, and socialize with their peers. This is a right mandated by law but that may be denied because of the rigidity of thinking surrounding a LRE.

### **Special Education Law**

Cases that influenced educational opportunities for students with SD began with a landmark case heard by the United States Supreme Court: *Brown v. Board of Education*, 347 U.S. 483 (1954). This ruling overturned the *Plessy v. Ferguson*, 163 U.S. 537 (1896), ruling allowing “separate but equal” educational services for black students. The 1954 case determined that “separate but equal” was really not equal. This ruling opened the door for expanded educational rights for students with disabilities, as well. However, it was more than 20 years before a law was passed addressing the education of students with disabilities.

The law for educating students with disabilities was finally adopted in 1975 The Education of All Handicapped Children Act (EAHCA) has core tenets. Some of these tenets outline the rights of students with SD to have (a) a free appropriate public education (FAPE), (b) an IEP, (c) special education services, (d) related services, (e) DP, and (f) a LRE. This law has been reauthorized six times, with a summary of changes for each authorization included in Table 2.

Table 2

*Evolution of Public Law 94-142*

Year	Public Law	Specific Focus
1978	94-142	1. Applied research to improve educational opportunities of students with disabilities
1983	98-199	1. Clarification of the term <i>special education</i> was defined as designed “to meet the unique educational needs of the handicapped child.” 2. Included services for students who were deaf or blind.
1986	101-457	1. Expanded the age to include children ages 3–5 years. 2. Specifically focused on those who were deaf, blind, or with multiple disabilities.
1990	101-476	1. Renamed Individuals with Disabilities Education Act (IDEA) 2. Specification that transition services to ease students with disabilities into adulthood be added to the IEP.
1997	105-17	1. IDEA included clarification on eligibility, evaluation, programming, private school placements, discipline, funding, attorney’s fees, dispute resolution, and procedural safeguards.
2004	108-446	1. Addition of “Improvement” in the title to become IDEIA. 2. Coordinates with Elementary Secondary Education Act (ESEA) titled: No Child Left Behind

*Note.* Adapted from “IDEA 2004: Another Round in the Reauthorization Process,” by T. E. C. Smith, 2005, *Remedial and Special Education*, 26, p. 316. Copyright © 2006 by ProQuest Research Library.

### Higher Court Rulings

The United States Supreme Court has ruled on very few cases about educating students with disabilities. Circuit courts have provided additional guidance on the LRE for all students;

although, there are not many appellate decisions either. The issues that are adjudicated are done mostly at DPHs. This is the venue where case law is determined. DPHs might be thought of as a trial court for special education. From circuit court appellate decisions come what are called “tests.” These tests provide guidance on what makes an environment least restrictive. The tests used by IHOs can come from the United States Supreme Court or from the circuit court where the case originated, or if the case is being heard in a circuit where a precedent has not been set, IHOs can *borrow* rulings from other circuits to make decisions on cases they hear.

The majority of cases for students with SD concerning LRE are determined in DPHs. These cases are decided by an IHO using guidance from previous rulings. The IHO listens to testimony from the state or local education agency (SEA or LEA) and from the parents or guardians and/or expert witnesses for the student who is the subject of the case. The IHO then applies the test(s) deemed appropriate and comes to a conclusion as to the legality of the placement under question.

### **Due Process**

DP is a right granted by law for all students with disabilities. During an IEP meeting that must occur at least once annually, a document called “Procedural Safeguards” is reviewed with parents or guardians. In this document the rights of the student are outlined. DP is one of the rights explained in the document. Parents or adult children can file for DP, as may school personnel, on behalf of the student.

The request for DP must be made in writing. After the request has been made and prior to the DPH, both parties engage in a resolution or mediation session (or the session may be waived). If the issues are resolved, a legal written agreement is signed by the parents and a representative with authority to act for the district. If a resolution is not consummated, the 45 day

timeline for DP takes effect and must be completed within this time frame. After an IHO rules on the case, identifying information is removed and the case is sent to the state and assigned an identifying case number. These case numbers, which will be used later to identify cases researched, also imbeds the year the DP was filed at the local level. The responsibility for paying for DPHs is assigned to the district.

Since a vast majority of all cases for students with SD never make it to circuit courts, and an exponentially smaller number make it to the United States Supreme Court. DPHs are an extremely valuable source of information for students with disabilities. In DPHs, parents or guardians identify areas of contention. For a percentage of these parents the LRE is at least a part of their concern. DPHs are the only formal record and present the only clear evidence as to why parents seek redress through DP. DPHs offer a wealth of information about whether placements for students with SD are following a continuum and whether parents and IHO are seeking out-of-the-box solutions to environments for students with SD. As stated before, many students with SD have great difficulty communicating their desires and wishes. Their communication is unconventional. We should be alert to ways they make choices. Education increases opportunity. If students are not exposed to different options, how can they make an educated selection? We need to foster intellectual stimulation for all so those students who are intellectually aware but unable to express it will have an enhanced quality of life. Instead of making education happen to these wonderful students, perhaps educators should make it happen for them. Examining DPHs will allow the determination of whether an IHO and parents or guardians are considering a variety of individualized environmental options for students with SD.

### **Lack of Evidence to Support Linear Placements/Environments**

Access to a LRE includes two parts: access to meaningful curriculum and access to typically achieving peers. Contact with a meaningful curriculum and with typically achieving peers may or may not be in an inclusive setting. Students with SD may encounter curriculum and peers in a sheltered or an inclusive setting. Researchers find that access to meaningful curriculum matters because ultimately students are being prepared for life after a public school setting. Very little research has been done comparing education and its correlation with post-high school outcomes for students with SD. However, it has been noted by Crawford (2010) as cited in Bennett & Gallagher (2013), that:

Regardless of the type or severity of disability, those individuals who have had highly inclusive educational experiences vs. those who have had low inclusive educational experiences are more likely to have graduated from high school, participated in community activities, have been employed and have a history of paid work, and have incomes above the poverty line. (p. 103)

Though inclusive placements don't always exclude linearity, it is often the case that inclusive placements are more individualized than placements or environments that rigidly hold to Reynolds's continuum. Crawford (2010) identifies more successful outcomes for students who are in inclusive environments. Reynolds's continuum, which was once a door-opening model now seems to rigidify placement options for students with SD (as cited in Bennett & Gallagher, 2013). Educators and education agencies need to look at each child as an individual. True individualization occurs when educators consider multiple options, not just available placements on a continuum.

DPHs are a unique, untapped resource to search for what kinds of placements are being sought and how individualized they are. All parties in a DPH are on the defensive. They want to carry their point. Much is at stake and determining whether individualization is happening for students with SD is imperative. Investigating and analyzing DPHs will help answer questions about environments for students with SD. Why is LRE problematic? How do DPHs resolve these environmental issues? The evidence offered through DPHs is not available from any other source. This is a unique database from which to draw evidence about the settings students with SD are in. What environments are parents or others seeking? Are these environments unique? What solutions are IHOs proposing, and are they individualized?

Thousands of students with SD nationwide may be stuck on a continuum. They are stuck because available placements fall along Reynolds's continuum and educators have adopted rigid thinking about available school environments. These students are entitled to the right to as diverse an education as we are able to design. Students with SD may be able to access a wider range of educational placements if specific, measurable goals are identified and a placement is chosen based on where that goal may best be met regardless of whether it is a traditional placement. Students with SD deserve individualization from educators in designing their education program. Innovative placements provide students with SD exposure to ideas, skills, and services that can potentially open leisure and employment options.

### **Qualitative Data Analysis**

I have yet to find research using DPHs as the database for qualitative data analysis. DPHs are used to do legal analyses to determine what the hot topics are in litigation for the current period of time. These legal analyses are used to inform educators about current trends in litigation. I have not yet found a qualitative analysis of DPHs to better understand parent and

education agency concerns. My analysis of these data about the LRE will broaden and deepen our conceptual understanding concerning LRE. Analyzing parent requests, IHO rulings, and education agency offerings will enrich our understanding of current thinking about LRE. Are there individualized placements for students with SD? If there are, are they the most frequent?

### **Research Question**

This study will address the following research question: What is the number and percentage of placements for students with significant disabilities based upon rulings from due process hearings from 2013 to 2015 that are in integrated vs. segregated settings?

### **Method**

DPHs about special education law offer vital information about the reasons parents/guardians seek this remedy for their children. Fortunately, many special education DPHs have been collected into a database called *Special Education Connection*. This database is accessible through the internet at a site called [specialedconnection.com](http://specialedconnection.com). This database is an expensive for-profit collection of cases by experts in the field. These cases are ruled on by personnel educated to hear special education DPHs. Should there be an appeal, it is heard by a SRO. The individual doing this review may have a slightly different title, but the job description is very similar for each state.

This database represents each circuit in the United States. Because the majority of decisions about students with disabilities are made in DPHs, this study will analyze information from the hearings about placements. From this analysis it will be possible to determine how often IHOs, educators, or parents customize for students in rigorous core classes such as science, social science, math, and English language arts; semi-structured classes such as physical education, fine arts, career and technical education classes; and other settings such as recess,



lunch and passing periods. The database identifies the legality of placements and whether students with SD have access to their typically achieving peers and meaningful curriculum and also offers insights into the linearity of placements being used by IHOs, educators, education agencies, and parents.

The database includes rulings about all disabilities identified under the Individuals with Disabilities Education Improvement Act (IDEIA). The students in these cases may range from those with mild to severe disabilities. The database may include decisions about personnel, physical locations, assistive technology, communication, or a myriad of other concerns parents may have. This database is underutilized, and information contained here offers a wealth of insights into apprehensions about students with all types of disabilities.

When students are assigned to a classroom at least 50% of the day, they are considered to be self-contained. From this setting students may have access to their typically achieving peers through reverse inclusion, which means that their peers come into the self-contained classroom for a specific period of time. These typical peers help students in a variety of ways. Another way for these students to access typically achieving peers is to participate in a GE class if deemed appropriate and in compliance with an IEP. This class may be a highly structured class such as math, English language arts, science, or social science. More often the class includes all career and technical education classes (or specialties/specials in elementary school terminology), fine art, practical art, and physical education.

### **Participants**

The students represented in this database include all disability types described by the IDEIA. The population addressed in this study included only three disability categories. They are students with intellectual disabilities (ID), students with multiple disabilities (MD), and students

on the autism spectrum. Each student in this study also had to have an ID as one of their MDs or as a part of their autism. I chose these three disability types because each may include students with ID. Students included in this study vary widely. Some students may look and act more like typical peers, while some may be nonverbal, immobile, or both. All students in this study, including students on the autism spectrum, qualify if their measurable intelligence quotient (IQ) falls more than two standard deviations below the mean of 100, or below a 70 IQ.

A measurable IQ may or may not be accurate, but because some students with SD are unable to verbalize their intellect, they generate scores in an ID range. Creatively placing these students is critical. There are documented cases of students who, for a variety of reasons, have not been able to indicate their intelligence physically or verbally, but eventually learn to communicate. These students tell of the immense frustration over the lack of stimulation that occurred for them and their utter boredom. Ensuring this does not happen for other students is the moral imperative for educators and education agencies.

### **Sample**

A preliminary search was done using a variety of Boolean operators to determine which terms generated the greatest number of cases. A population check was done to see if there was overlap among the terms used. This is important because cases where different terminology was used needed to be included. To generate this population, I used terms that identify environments, settings, or placements. These terms were *placement*, *LRE*, *inclusion*, *mainstreaming*, *continuum of placements*, and *reverse mainstreaming*. Terms that identified students with SDs included *ID*, *MD*, *autism*, *SD*, *medically fragile*, *severely impaired*, *severe disabilities*, *tracheal sectioning*, and *nasal and gastrostomy*. The first three terms are *ID*, *MD* and *autism*. These three terms are identified in the IDEIA. I combined these three terms with all the terms I could think of that

would identify placements or environments these students could be in. Combining setting and disability terms identified cases that addressed issues for students with SD and their setting. I used the time parameter of five years to generate the number of cases identified with each set of Boolean operators in Table 3. I was also interested to see if terminology identified in practice would generate additional or more diverse cases. The other terms (*SD*, *medically fragile*, *severely impaired*, *severe disabilities*, *nasal and gastrointestinal*, and *tracheal*) are not included in the law but are terms used in practice to identify disabilities of these students. These Boolean operators failed to identify additional cases. IHOs and those giving testimony used legal terminology to testify of and write about students with SD.

My time-bounded population was generated using Boolean operators identified in Table 3. The three Boolean search terms I used were *MD* and *placement*, which yielded 333 cases; *ID* and *placement*, which yielded 73 cases; and *autism* and *ID* and *placement*, which yielded 101 cases. The total number of cases initially screened was 507. The time parameter began May 1, 2013 and concluded on May 10, 2015. The population was narrowed further by including only cases where students exhibited an ID.

### **Data Analysis**

I did a preliminary analysis of the 507 cases to parse out those that really did talk about placement and included students with SD. To pare down those 507 cases, it was necessary to either read each summary or, if there was no summary, to read through the cases and pay specific attention to the demographic data which usually contained the disability, intellectual ability, and at times the placement. Often the identification of the placement was not located near the demographic data. In those instances, it required a more intense search of the case to find what the placement was. Cases where students were identified with MDs may not have had an ID as

Table 3

*Boolean Searches from December 3, 2009 to December 3, 2014*

		<i>Search Terms for Student Placement or Environment</i>						
		Placement	LRE	Inclusion	Mainstream %*	Continuum of Placement %*	Reverse Mainstream %*	
<i>Search Terms for Student Disability Classification</i>	Legal Classification Terminology	Intellectual Disability	499	277	149	117	40	6
		Multiple Disabilities	813	495	211	201	60	21
		Autism and Intellectual Disability**	224	135	68	68	26	6
		Autism and Intellectual Disability***	261	167	85	87	13	6
	Special Education Practice Terminology	Significant Disabilities	63	37	31	19	4	2
		Medically Fragile	86	51	16	21	7	1
		Severely Impaired	73	48	28	31	8	9
		Severe Disabilities	650	423	238	276	48	14
		Nasal and gastrointestinal**	3	2	3	2	0	0
		Tracheal	23	15	8	13	1	1

The numbers at the intersection of “Search Terms for Student Disability Classification” and “Search Terms for Student Placement or Environment” indicate the amount of cases in which both search terms appeared.

\* The “%” symbol was included in the search term. If it was omitted the number of results decreased.

\*\* This search was performed by placing the search term within parentheses, requiring an exact search of all words.

\*\*\* This search was performed without using parentheses, allowing cases that matched either term to appear.

*Note.* I did a sample check between *multiple disabilities and placement* (first 15 cases) and *severe disabilities and placement* (only eight cases); none of the cases are the same for the five-month period between July 3 and December 3, 2014. I also checked *intellectual disabilities and placement* (first 15 cases) for that time period; three cases matched *multiple disabilities and placement*, and three cases matched *severe disabilities and placement*. Of the six identified “cases,” two are letters titled “Dear Colleague Letter” and a letter addressing “FAQ’s.” The other four are actual cases, which overlap these two areas. Four of the 38 cases I looked at overlap, meaning 84% of the cases are different between the three areas. Of the two cases under significant disability and least restrictive environment for the time period, and the two cases under severely impaired, one each matched the three previous searches.

one of their deficits. It was necessary to comb each case to find a list of the disabilities included as part of that classification. Some cases caught in the search may have been about students with SD, but were not about the setting or environment. As I searched each of the 507 cases and found them appropriate, I imported them into the qualitative data analysis program NVivo. When I completed this initial analysis, I had imported 107 cases.

Open or pattern coding was done initially to determine what settings were being contested and how they were identified. Some nodes coded to included demographic data, such as age, gender, and disability type. Nodes about settings, which were the source of conflict, included the contested setting (the setting the parents were unhappy with) and the requested setting (the setting parents wanted their child to be in). This intensive analysis included a comprehensive screening of whether each case was about students with the disability types I was interested in. At times the intellectual impact was not intense enough, meaning that the IQ score was above 70, or student environments were not really about their placement. While doing this in-depth analysis I had to discard another 25 cases that failed to meet the criteria for this study. My final count of appropriate hearings is 82 core cases.

As we identified which circuits and states were represented, we noticed that Florida, a state with a relatively large population and a higher rate of litigation, was not represented. In order to ensure I was not missing important cases, I did a more exhaustive search to find cases from Florida for the time period identified. That search generated 116 cases. I did an analysis of each of those hearings to ensure I had not excluded representative cases. This was an important audit check to ensure an accurate representation of cases with these criteria. I did not find any additional cases that fit the criteria in this search from Florida.

Similarly, I looked at the Eighth circuit to ensure I had not missed cases representative of my study. I found no additional cases that fit my criteria. Even though the Eighth circuit is not represented, included cases provide a snapshot of placements for students with SD. For the purposes of this analysis, I did not feel there needed to be a representative population from all states in proportion to their size because placements for students is a systemic problem and is federally regulated. No matter where the cases are from, they represent problems identified with the special education system. Since all circuits in the United States except the Eighth circuit were represented, I did another search to determine if the Eighth circuit published cases to this database. The circuit does, but none of their cases for this time period fit the criteria of the data analysis.

Sixteen states were represented in the data set. Washington, DC, and the states of New York and California each have 13 or more cases. Pennsylvania has eight cases. The other 12 states had four or fewer cases represented. Five states had only one case in the data set (see Table 4).

Because I am interested in whether the student's current setting was a structured environment (English language arts, math, science, or social science), semi-structured (career technical education classes, fine or practical arts, or physical education), or unstructured, I coded to these nodes. It was interesting to note whether the requested setting was more or less restrictive. Other nodes emerged during the coding process. Data analysis was refined through axial coding. Coding to nodes that were on the current *continuum of placements* helped determine whether the *continuum of placements* model was being interpreted in a linear way.

Table 4

*Circuit Courts with Number of Cases Represented from Each State*

Circuit	Number of Cases for Each Circuit	State	Number of Cases per State
1	2	Maine	2
2	28	New York	23
		Massachusetts	4
		Connecticut	1
3	8	Pennsylvania	8
4	17	Washington, DC	14
		Maryland	3
5	2	Texas	2
6	1	Ohio	1
7	3	Illinois	3
8	0	No States had cases	0
9	15	California	13
		Hawaii	1
		Utah	1
10	4	Colorado	3
		New Mexico	1
11	2	Georgia	2

*Note.* I did a search for cases in the database for the state of Florida and got 116 hits. I looked at each case to ensure I had not left any out. None of the 116 cases fit the criteria for the data analysis I am doing.

In this analysis the class(es) students were currently served in for a majority of the cases were indicated by terms such as self-contained, severely disabled, special class, or special school. Individualization for students with significant disabilities includes access to typically developing peers. I looked for the term *GE* as well as any class, by name, which typically achieving peers would take. I also looked for terminology such as *out-classes*, *lunch*, *recess*, *passing periods*, or *specialty classes*. In 58 of the cases (a majority), parents/guardians did not seek placements where typically achieving students were educated, nor did IHOs rule to have students included in such settings. This was surprising to me because when students with SD leave public school settings, they will be rubbing shoulders on a daily basis with people who are very diverse but more typical.

As IHOs listened to testimony of student advocates, parents/guardians, and school personnel, they were determining whether the witnesses were credible. Credibility was established by the education level of the witness, how well the witness knew the student, and the demeanor of the witness. If a witness was very educated but only able to speak in generalities because they had not observed the student, that witness was not usually given great credibility. If a witness seemed defensive or on guard, that witness was discredited. The witnesses most persuasive to IHOs were those who knew and had worked with or observed the student in their school environment and/or at home. Parents were accorded careful consideration. Even when IHOs did not rule in favor of parents, in most cases, IHOs would make a statement indicating they could tell how much the parents cared about their child and wanted what was best for them.

### **Limitations**

Limitations of this research include the fact that the database may not include all DPHs completed in the United States. It may also over-represent the states or circuits that have many DPHs and underrepresent states or circuits where there are few DPHs. A count was made (see Table 4) of the cases identified to achieve transparency for the research and to help determine which states or circuits are overrepresented, underrepresented, or not represented at all.

Whether a student with an IEP has measurable goals or not is not always, or even usually, the dispositive issue in DPHs. Because this is so, it is possible that goals were identified in more of the 82 cases, but the information on goals was not deemed critical enough to warrant space in the written decision. This limitation may have occurred because of the nature of the database.

Because the focus of this analysis is on the interplay between parent requests and the rulings generated for LRE, a representative sample covering all geographic areas and all circuits was not sought. The difficulties associated with LRE are a systemic problem. Thick description



throughout data analysis provides detail needed to help consumers determine where their current placements fall and allow them to determine if their placements may prove to be problematic.

IHOs have only the information that is brought to the hearing. They have what the school indicates is necessary for a student to be successful and what parents or their advocates indicate is appropriate for the student. In order to make a ruling, the information has to be presented by one party or the other. The individualization identified in this research was limited by the thinking of the parties involved in the hearings.

### **Results**

Cases in the DPHs I looked at fell into various categories. The first category identified whether students had GE classes or not. In focusing on the cases where students had GE classes, the second category indicated what kind of setting the students were in: structured, semi-structured, or unstructured. Of the cases where students were in one of these three settings, the final category indicated whether goals were associated with their GE setting and what those goals were.

As I looked at DPHs initially, I was seeking insights into the decision-making process of those involved. The analysis of these cases included looking for indicators for what parents, school personnel, or IHOs were seeking as alternative solutions to the dilemma created by the DPH. The following quotation from case number 113 LRP 39705 illustrates how IHO decisions were made based on evidence from the hearing:

Several District witnesses testified that they must teach to Student's unique needs which, in this case, would preclude using an evidence based method like ABA. The undersigned rejects this opinion as the undersigned rejects the District's assumptions on what considering a student's unique needs means as discussed below in the application of law

to fact. The undersigned adopts the opinions and factual inferences of the Independent Psychologist and Independent School Psychologist that Student needs ABA (or another evidence based methodology) in order to obtain a reasonable educational benefit. The undersigned adopts the factual bases for Independent Psychologist's opinions (located in his report, testimony, and testing). The undersigned also bases this inference on the fact that the District did not present any expert opinion formulating a countervailing base their decisions on the testimony of witnesses. If witnesses, including parents or those provided by parents and witnesses involved with the school or provided by the school, offer no testimony about a setting or environment that the hearing officer can discriminate between, the hearing officer must make a choice between what is presented in the hearing, regardless of whether or not those settings provide an individualized solution to the dilemma faced by the student.

I found evidence of individualization for students with SD in several of the cases where students had GE classes. In a public school setting, those students who were in GE classes were in the most unique settings available to them. In order for a GE class to be meaningful for students with SD, there has to be a purpose, or a goal. Goals for any student with disabilities are, or should be, designed by the team, which includes relevant educators (general and special), an administrator, and, very importantly, parents. This is done in an IEP meeting. Goals, legally and morally, define what students are to be taught and how it is to be measured.

For the goals to be effective, they must be measured and monitored. IHOs, where goals were identified, looked for progress to be monitored, as is illustrated by the following quotation from case number 114 LRP 28795:

Testimony that a 17-year-old with multiple disabilities and a hearing impairment shut down in two general education classes bolstered a parent's claims that the teen was never given a shot at meaningfully participating there. Noting that the high schooler's general education teachers were in the dark regarding their responsibilities for facilitating the student's interaction in class for at least the first month of the school year, the Colorado ED concluded that the district failed to implement material portions of the student's IEP. The IEP required the English and American History teachers to support the student in interacting with peers, communicating effectively, and advocating for herself, so that she could reach her postsecondary goals of independent living and working in customer service. However, at the beginning of the school year, the special education teacher provided the teachers with a "snapshot" of the IEP that didn't fully discuss their responsibilities.

Because goals, in this case, were not communicated effectively, progress was not made.

Regression occurred.

Twenty-four of the students in these DPHs had access to GE classes. Of the 24, six of them were in structured settings. Twenty of the students had semi-structured GE classes, which means they were in career and technical education classes, fine and practical arts, physical education, or a combination of these or other settings. Eleven of the students were in unstructured settings, which means lunch, recess, passing periods, or before or after school.

### **Discussion**

DPHs provide a wealth of information regarding environments where students with SD access public school. They also provide information about what placements are requested by parents and whether IHOs and parents are ruling on or requesting settings that may be unique or

creative. The data from DPHs provide insight into the kinds of decisions being made or requests being pursued concerning environments where students with SD are being educated. Knowing the intensity and distribution of these cases helps us understand the problem itself.

The following are my findings about the distribution and type of DPHs for students with SD throughout the United States in a two-year period, as represented in this database. The analysis of DPHs began as we determined which DPHs would be appropriate. Boolean operators were used to garner information about how many years to use and what operators generated the broadest spectrum to ensure the inclusion of students with different IDs. I used the vocabulary for settings that included placement, LRE, inclusion, mainstream, continuum of placements, and reverse mainstreaming. For disability types, I chose to use the vocabulary that follows: *ID, MD, autism and ID, SDs, medically fragile, severely impaired, severe disabilities, nasal and gastrointestinal, and tracheal*. These terms are either part of special education law or special education policy and practice.

The following data identify where the 82 students were spending their day. Of the 82 cases, 29.2%, or 24 students, were in self-contained classrooms with GE classes. Fewer than 30% of the students in self-contained classrooms had access to their typically achieving peers through GE classes. Prior to the rulings, the majority of students (58.5%, n= 48) were self-contained all day. These students may have had access to typically achieving peers through push-in or reverse inclusion. However, this study identifies only 7.3%, or six students, who had access to their typically achieving peers in this way. These six students were included in other counts because they were in their self-contained classroom when these practices occurred. Three students, 3%, were in school only part of the day, and one student's setting was unidentified. Six students, 7.3%, were in GE with pullout services. That means they were assigned to a GE class

for much of the day, and that they were pulled out of the GE class for instruction on their level for core subjects, such as English language arts and math.

The descriptions of GE classes provide in the environments section of this paper provide clarity. The descriptors are structured, semi-structured, or unstructured. Of the cases where students had GE classes, six students were included in structured settings, 19 students were included in semi-structured placements, and 11 students were included in unstructured environments. Thirty-six students have been identified as being in one or a combination of these GE environments. Some students had more than one GE environment during the course of a school day. Students with SD included in these ways all had access to typically achieving peers in an environment where they interacted with and watched interactions among their typically achieving peers in a natural, more typical, unsheltered way.

### **Structured Settings**

One of the students in a structured setting had an academic goal. The student included in the social science class had a very modified curriculum and was tested on the modified content. Modifications occurred as the special and general educator worked together to make the academic content comprehensible (114 LRP 27208). Social science content knowledge was the goal and knowledge acquisition was facilitated as the general and special educator worked together to modify the curriculum so the student with SD could access it.

Two students were included in a science and English class respectively to learn to approximate typically achieving student behaviors. For the student included in the science class, parents were concerned about the student's ability to be successful, but the special educator felt that although:

mainstreaming in the science class would be difficult for student, he would benefit from the interaction with peers. Student needed exposure in the least restrictive environment where he could interact with others. Her (the special educator's) concern was that if placed with lower functioning students, student would compensate with lower actions.

(115 LRP 3628)

The goal for this student from case number 115 LRP 3628 was to be socially appropriate in the science class. The content was important, but having the student approximate typical student behavior was of even greater importance. The student "participated in class and interacted appropriately. Although he was frequently off task he was easily redirected." The special educator also noted in her testimony that "student had a desire to be social and interact with peers. To do so, he will drop to the level of lower children or rise to the level of higher children." The special educator "expressed concern that student would not make social gains if placed in a moderate/severe program. Student needs to be socially challenged with peers."

The third student, whose quote is above, was included in English and an American History class to learn to engage in age-appropriate behaviors. The goal was to support "the student in interacting with peers, communicating effectively, and advocating for herself, so that she could reach her postsecondary goals of independent living and working in customer service" (114 LRP 28795). Unfortunately, this goal was not well communicated, which was the reason for the DPH. At the beginning of the school year, the special educator "provided the teachers with a 'snapshot' of the IEP that didn't fully discuss their responsibilities. The student ultimately refused help in the general education classes, stopped responding to the teachers' questions, and withdrew into herself."

In the other three cases, no goal, academic or behavioral, was identified. These students did have access to their typically achieving peers, but they may not have been engaged in meaningful IEP-related activities focused on mastering a goal. For that reason, though access to typically achieving peers may have been beneficial, there is no certainty about any progress the students made in this structured, relatively unique setting. For progress to be verified it has to be based on an IEP goal that determines how progress will be measured.

### **Semi-Structured Settings**

Of the 24 students who had GE classes, 20 were in semi-structured settings. Students who were in semi-structured settings may also have been placed in a structured or unstructured setting, so the number of GE classes identified is more than the 24 students who had GE classes because some had multiple placements.

Of the 20 students who had semi-structured GE classes, three had academic goals relating to their semi-structured setting. A semi-structured setting includes career and technical education classes, fine and practical arts, and physical education. The three goals for academics were for keyboarding, content area reading, and job skills including math. The student included in the keyboarding class:

did not distract the other students, and had keyboarding skills better than some of his typically developing peers. Mr. Becker was particularly impressed with Student's aide, who enabled Student to participate in some classroom assignments and facilitated interaction with his classmates. There was little opportunity for Student to socialize, as the keyboarding class was set up to mimic a business environment, and there was no talking allowed and little discussion. (114 LRP 53221)

Keyboarding is a particularly useful skill for a student with disabilities. It opens opportunities for work. This class allowed the student to gain a marketable life skill. The DPH was not about this class, but about the student's physical education class, where the student was "coming home with his clothes on backwards and that they (parents) were worried about his safety in the boy's locker room for mainstreamed physical education without his aide." Though physical education seems a natural place where students with SD may be included, for this particular student the setting does not seem to have been working.

The second student was included in a life skills support classroom. This class was for students with mild disabilities. This classroom, though not a GE class, would have looked very similar to the structure of a GE class. This environment was chosen to allow the student with SD to work on "a literacy curriculum" (112 LRP 41958). The student "did not make any academic progress in the life skills support class, despite differentiated instruction by the teacher." It is important to note that though this student did not make academic progress in the class, something was learned about him or her. The student was allowed the chance to work at a higher level than the self-contained classroom he or she was usually in. It may not have appeared to be successful, but the student had a chance to make meaningful progress, and something was learned about the student that was not known before and could be used to guide future LRE discussions.

The third student was included in a work-based learning class, which falls under career and technical education. The student:

made progress in learning job related skills. By October 2011, Student's community skills included using a written/picture grocery list; reading expiration dates with prompts; read prices on labels with one prompt; match coupons with prompts; count mixed change up to a dollar; and buy items at a store. (113 LRP 40770)



This student, through the work-based learning class, was able to develop life skills with support. These skills can, in time and with a lot of practice, become independent-living skills. It would appear that this student has the potential to make enough progress to live in an apartment with a moderate level of support.

The other goals identified for nine students in their semi-structured GE classes were social goals. Of these nine students, seven of their goals were explicitly stated in the DPH. The other two were implied. The first student is the same student who had an academic goal for the life skills support classroom. This student also had a social goal. The “student did not socialize spontaneously and made little progress socially, despite prompting by the teacher” (112 LRP 41958). Though the student didn’t appear to make progress, special educators made the effort to find whether this student could progress in a less restrictive environment. Because the student did not thrive in the life skills classroom, the conclusion could be drawn that this particular student’s LRE was most likely his or her self-contained classroom.

Six of the students in semi-structured settings were included through physical education. One school included as many students with SD as possible through the following model.

Students would gradually be introduced to the general education students through a social skills program. There was a plan to integrate PE classes into a unified sports program which would give students an opportunity to play soccer and basketball with general education peers. (113 LRP 43692)

Another student was placed in physical education with typically achieving peers with support, which seems to be more typical based on DPHs in this study. Case number 114 LRP 27208 identifies more typical supports in this way: “Supplementary aids and services included shared adult direct support in the general education class and in physical education, delivered

according to a specially designed instruction item in the IEP.” This IEP team seems to have done a thorough job of identifying the supports necessary for each GE class and had written the specific plan into the IEP.

One other student had a unique experience related to physical education. It seems that this came about because of the student’s enthusiasm for sports. This student “participated on the cross-country running and track teams at school. Although he always came in last, he enjoyed it and continued to participate, with hearty encouragement from his teammates” (113 LRP 39386). This student, due to his eagerness and passion for running, was included with GE teammates in a meaningful way.

Four students were included in art and or music classes, which are semi-structured. Two students (114 LRP 27208 and 114 LRP 5561) were included in both music and art with the agreement of their parents. Two other students (114 LRP 53431 and 114 LRP 53598) were included over the objection of their parents. The IHO ruled against one parent because of evidence that the:

Student thrived in the inclusion activities, which included theater, art, music, dance, library and other enriching activities. Contrary to Mother’s fears, no harm came to Student from these activities. She was well-liked by the general education students, developed friendships, took part in a theatrical production and generally progressed in her socialization and verbalization skills. (114 LRP 53431)

The IHO ruled that this setting, over the objection of the parents, was appropriate for this student, based on the overwhelming testimony of school personnel that the student was benefitting from the GE setting. Her IEP goals for socialization and communication were being met in these environments.

It was proposed that the other student from case number 114 LRP 53598 be included in art and music, among other things, from a self-contained class. His parents strongly objected. They filed for DP because of this proposed change from a GE class most of the most of the day to a self-contained special education class with GE classes. However, the IHO noted that while the 7th Circuit has not adopted a test for assessing when a student with a disability may remain in a GE classroom, it has held that “it is not enough to show that a student is obtaining some benefit, no matter how minimal, at the mainstream school.” This student was making “minimal” progress in a GE class but would have a chance for more targeted instruction, which had the potential to increase progress, in a special education class and still have the benefit of interacting with typically achieving peers in GE classes.

Nine students with semi-structured GE classes had no identified goals associated with their placement. The GE classes may or may not have benefited these students because they were interacting with their typically achieving peers. If there were no identified goals, I was unable to determine if the setting proved to be uniquely appropriate for these students.

### **Unstructured Settings**

All 11 cases that identified unstructured settings where students with SD have access to their typically achieving peers also identified a semi-structured or structured setting that was proposed or that the student was in. The goals for the unstructured settings were always social if they were identified. Five of the cases that identified unstructured settings had no identified goal. Of the other six cases, four had social-skills goals, and one implied a social-skills goal. There were also cases that identified life skills as a goal for unstructured settings.

For the students who had GE classes and identified goals, their settings provided information about the student, whether the setting was successful or not. Educators designing

goals for GE classes provided opportunities for students with SD to gain life and leisure skills. It appears that though 24 students had GE classes, a small number of them were provided the opportunity for meaningful progress through the IEP process where goals were designed and monitored. Fewer than half of the students who had GE classes also had goals identified to ensure that the setting was helpful in promoting life or leisure skills. Approximately 13% of the students identified in the DPHs were in (for them) an integrated public school setting where goals were identified and progress was monitored.

### **Goals**

Measurable goals are fundamental to a well-written IEP. Monitoring and measuring progress for students on their goals is how educators determine whether settings are facilitating student growth. It was astonishing to note that for structured settings three of the six students identified did not have goals associated with their placements. Nine of 20 students who had semi-structured classes had no goals identified with their placements. Five of the 11 cases where students were in unstructured settings failed to identify an associated goal. In order for an environment to be deemed successful for students with SD, it is essential that goals be associated with the setting and that the goals be measured. If this is not happening, there is no way for IHOs to identify LRE for students with SD. A goal has to be identified and student progress measured.

About half of the students in inclusive settings in a public school had goals identified with the setting they were in. Of the 82 cases I examined, only 24 had GE classes, and of those, only 12 cases, or 14% overall, had goals associated with their inclusive setting. It would seem that parents/guardians, educators, and IHOs need to do a better job of identifying and measuring progress for students with SD in their inclusive environments.

### **Implications for Future Research**

Future research may replicate this analysis for a different time period to determine if similar results are found. It is my hope that in the future, better descriptors can be found for the settings or environments that students with SD are included in and the goals identified so that more research is generalizable for these students. It is also my hope that descriptors of levels of impact for students with SD may be developed so that research for students with SD may be more targeted to different segments of the SD population. Because normed intellectual assessments do not clearly identify levels of impact for students with SD, other assessments or rubrics must be found to describe who (within these disability categories) the research for students with SD is about.

This topic was of great interest to me because of my extensive experience with students who have SDs. I have seen teachers individualize but also some who follow the continuum rigidly. For this reason, it was very important to me to determine how decisions were made for this diverse population in DPHs. My feelings are that this population, without great care, may be greatly underserved, thereby limiting their progress and impacting all of society. Society is impacted because some of these students are capable of holding down jobs and becoming consumers of goods and services. By limiting their growth, all of us pay a price, the students most of all. Future researchers may want to explore how students with SD are prepared for life after public education and delve more deeply into how inclusive educations prepare them for future success or failure.

### **Implications for Practitioners**

Practitioners may want to scrutinize their practice to determine if they are including students with SD to the fullest extent appropriate. This is very important, because practitioners

are preparing students to become active members of society. The limited amount of research available indicates that the more inclusive the education is for students with SD, the better prepared they are to be functioning members of society (Ryndak, Ward, Alper, Storch, & Montgomery, 2010). Spending money now may help save money later and allow this diverse population to become wage earners and consumers. Practitioners may also want to ensure that they have goals that are developed and clearly communicated in conjunction with the GE teacher through input in IEP meetings for the students they include.

If these two items are attended to, it is probable that students will be placed in their LRE with the supports necessary for them to be successful. If the students are not successful, educators have still learned something about the student in the process.

### **Conclusion**

This in-depth analysis of DPHs for students who are categorized with SD indicates that if individualization was not present in the school's educational placement and if the parents or their advocates were not seeking an individualized solution, then IHOs had no way to rule on an individualized option. I was hoping to find that school personnel and parents were thinking uniquely about placements for students with SD. DPHs for students with SD and the environments they are educated in highlighted information about parental concerns for these students. Parents access DP because they are unhappy with the education of their child. In-depth analysis of the cases that focus on LRE indicate that fewer than 29% of students with SD have GE classes with their typically achieving peers. Of this 29%, only half of the environments have measurable goals associated with the GE classes. Because this is the case, it is difficult to determine the effectiveness of the GE classes for students with SD.

Not all students with SD can be helped appropriately in GE settings. However, it would appear that the time has come to look at LRE in a new way. Research on LRE needs to focus on students with SD being included in more diverse settings with goals that determine what progress looks like for each student. New policy may need to include the directive that educators explore options with depth and breadth rather than options on a continuum. Reynolds's (1962) *continuum of placements* model provided a much-needed avenue for students with SD to be in a public school setting. It is now time to outgrow that model and move forward by looking at new ways to assist students with SD to have access to meaningful curriculum and to interactions with their typically achieving peers.

GE environments in public schools can be defined in three ways: structured (math, English language arts, science, and social science), semi-structured (career and technical education classes, fine arts, and physical education), and unstructured (recess, lunch, passing periods, and before or after school). Students with SD in any of these settings may have academic, social, or life-skills goals associated with the placement, depending on the needs of the student.

The aim of DPHs should be to determine the legality of the environment being contested. I was surprised to find that in a majority of the hearings the settings being requested followed the *continuum of placements* model closely. I was hoping that parents would advocate for students with SD to be included in GE classes where they had exhibited an interest. For example, a parent who has a student who responds to sound could advocate for that student to be included in a music class such as choir or band. I was surprised that this was not the case. IHOs are able to rule only on the contested or requested placements, which are presented by the parents/guardians or school personnel.

Data included in the hearings that I was able to access in my research suggests that having a goal designed with the general educator for the student and communicating the goal to the GE teacher(s) make any environment more appropriate and defensible. Special educators who, in conjunction with general educators, identify and communicate appropriate goals give their students an opportunity to demonstrate progress and have access to their typically achieving peers. These educators demonstrate creativity as they comply with the law.

My analysis of DPHs demonstrated that individualization is present in a small minority of cases. I originally thought I would see parents and school officials searching for ways to serve these students in a greater variety of ways. Ensuring opportunity for student growth is the objective of the law. Helping students with SD find success in environments with their typically achieving peers prepares them for life after a public school environment. There is research, though it is limited, on outcomes for students who are in more inclusive public school settings and their success as adults (Ryndak, et al., 2010). Another benefit of inclusive settings is that they allow typically achieving students to interact with students who may have greater difficulty accessing an education. This interaction benefits both sets of students. Educating students in their LRE is beneficial to our society as a whole. Students with SD deserve our best efforts legally and morally, not just for society, but to allow them the fullest, richest life possible. We do this by individualizing their education and putting them in their LRE.



## References

- Bennett, S. M., & Gallagher, T. L. (2013). High school students with intellectual disabilities in the school and workplace: Multiple perspectives on inclusion. *Canadian Journal of Education, 36*, 96–124.
- Brown v. Board of Education, 347 U.S.C. § 483 (1954).
- Carter, E. W., Sisco, L. G., Chung, Y. C., & Stanton-Chapman, T. L. (2010). Peer interactions of students with intellectual disabilities and/or autism: A map of the intervention literature. *Research and Practice for Persons with Severe Disabilities, 35*, 63–79.
- Downey Unified Sch. Dist., 114 LRP 53221 (Calif. SEA, Dec. 3, 2014).
- Education for All Handicapped Children Act, 20 U.S.C. § 1400 (1975).
- In re: Student with a Disability, 114 LRP 53598 (Ill. SEA, Dec. 2, 2014).
- Individuals with Disabilities Education Act of 1975, Pub. L. No. 94-142.
- Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446.
- Kayama, M. (2010). Parental experiences of children's disabilities and special education in the United States and Japan: Implications for school social work. *Social Work, 55*, 117–125.
- Los Angeles Unified Sch. Dist., 113 LRP 43692 (Calif. SEA, Oct. 16, 2013).
- Los Angeles Unified Sch. Dist., 114 LRP 53431 (Calif. SEA, Nov. 25, 2014).
- MacDonald, E. E., & Hastings, R. P. (2010). Mindful parenting and care involvement of fathers of children with intellectual disabilities. *Journal of Family Studies, 19*, 236–240.
- Moreland Sch. Dist., 114 LRP 5561 (Calif. SEA, Jan. 3, 2014).
- Northwest Colorado Board of Cooperative Educational Services, 114 LRP 28795 (Co. SEA, May 2, 2014).
- Parkland Sch. Dist., 113 LRP 40770 (Penn. SEA, Sept. 13, 2013).

Philadelphia Sch. Dist., 112 LRP 41958 (Penn. SEA, July 12, 2012).

Plessy v. Ferguson, 163 U.S. C. § 537 (1896).

Regional Sch. Unit # 57, 113 LRP 39386 (Maine SEA, May 21, 2013).

Reynolds, M. C. (1962). A framework for considering some issues in special education.

*Exceptional Children*, 28, 367–370.

Ryndak, D., Ward, T., Alper, S., Storch, J. F., & Montgomery, J. W. (2010). Long-term outcomes of services in inclusive and self-contained settings for siblings with comparable significant disabilities. *Education and Training in Autism and Developmental Disabilities*, 45(1), 38–53.

Smith, T. E. C. (2005). IDEA 2004: Another round in the reauthorization process. *Remedial and Special Education*, 26, 314–319.

Spooner, F., Dymond, S. K., Smith, A., & Kennedy, C. H. (2006). What we know and need to know about accessing the general curriculum for students with significant cognitive disabilities. *Research and Practice for Persons with Severe Disabilities*, 31, 277–283.

Taylor, S. J. (2004). Caught in the continuum: A critical analysis of the principle of the least restrictive environment. *Research and Practice for Persons with Severe Disabilities*, 29, 218–230.

Tustin Unified Sch. Dist. 115 LRP 3628 (Calif. SEA, Jan. 15, 2015).

Weasmer, J., & Woods, A. M. (2010). It takes a community. *Kappa Delta Pi Record*, 46, 127–131.

## APPENDIX A: Review of Literature

School environments have been problematic for students with significant disabilities (SD) for decades. Before the Education for All Handicapped Children Act (EAHCA) passed in 1975 most children with SD were not educated in a public school setting. These children were excluded from this environment because public schools were not designed to meet their needs. Most were educated at home or placed in schools designed to serve their disability. Civil liberty infringements occurred because public education was unavailable for these students.

### **Characteristics**

My research will address students who have a disabling condition that also includes an intellectual or cognitive disability. These students are identified using classification categories included in the current law Individuals with Disabilities Education Improvement Act (IDEIA) PL 108-446. There are three different categories that identify the students I want to study. The categories are students with multiple disabilities (MD), intellectual disabilities (ID), and autism (AU). Not all students classified as students with multiple disabilities and students on the autism spectrum also have a cognitive impairment. Due process hearings generally include information that will allow me to narrow my research to those with cognitive or intellectual disabilities. To qualify as a student with a cognitive or intellectual disability, a student must have an intelligence quotient (IQ) standard score of 70 or less. Many of these students have IQs that are not measurable using current assessments. Because students may not have an IQ capable of being scored, environmental options may be limited, not because environments are unavailable but because educators fail to consider ways the public school environments can and should be used to educate all students.

## School Environments

A landmark article by Reynolds (1962) identified a “continuum of placements” for students with disabilities (see Figure 1). This article identified the need for placements designed to accommodate students with SD and provided a starting point for public educators to begin devising environments to meet the needs of non-traditional students. Reynolds’s article proved to be catalytic. Great strides were made for students with SD because of it. They began to have a place in the public schools. Though the placements followed a very linear model, placements were now available for students with SD. Sixteen years after the publication of Reynolds’s article, the EAHCA further solidified the rights of these students to an education that would meet their needs in their Least Restrictive Environment (LRE).

The environments that became available followed Reynolds’s “continuum” very closely. Students who looked and acted less typically were housed in special classes or special schools, had homebound services, or were in residential placements removed from their families. Though these students were included in the public school system, they were excluded from their more typical peers by the nature of the continuum. This exclusion fails to provide a LRE for students with SD. The term *continuum of placements* continues to be used at the present time. This term is not a formal policy, nor is it included in the law. The term and all it implies is embedded in the practice of special education across the nation. It is my belief that this term limits the placement options for students with SD because it gives educators the false impression that students are to be placed along this linear continuum, rather than encouraging them to think about individualizing placements for these SD students. Students with SD are as diverse as their more typical peers and deserve the chance to develop their interests and abilities through an individualized education. Because of the linearity of the continuum, exposure to environments

that help them explore interests and abilities are limited. The limitations are artificial and unnecessary.

Environments within a public school setting fall into three types. My terminology for these environments defines them as structured, semi-structured, and unstructured. Structured environments are those where output is highly tested for proficiency and would include math, English language arts, social science, and science. Semi-structured environments would include settings where student proficiency may be based on growth from an entry-level to an exit-level proficiency. These settings include career and technical education, physical education, and fine art. Unstructured settings would include lunch, recess, and passing periods, where students are free to interact with each other without a great deal of adult intervention.

All of these environments can and should be open to students with SD depending on what the student needs. Each environment can be appropriate depending on what goals have been established by the Individualized Education Plan (IEP) team. Because many educators follow the linear continuum and use previously designed placements, students with SD are excluded from some possible options. Students with SD need opportunities to model the appropriate behavior of typically achieving students, learn academic and life skills, and socialize with their typically achieving peers. This is a right mandated by law for students with disabilities, but this right may be denied because of the rigidity of thinking surrounding LRE.

### **The Law**

A landmark law that opened the door for students with SD in the public education system was a United States Supreme Court case titled *Brown v. Board of Education*, 347 U.S. 483 (1954). This law overturned the *Plessy v. Ferguson* 163 U.S. 537 (1896) ruling allowing “separate but equal” educational services for black students. The 1954 ruling determined that

“separate but equal” was really not equal. This ruling, though about the civil rights of black students, opened the door for students with disabilities to be educated in an integrated public school setting.

A law for educating students with disabilities was finally passed in 1978. EAHCA had six core tenets. They are that students with disabilities have the right to (1) a free appropriate public education (FAPE), (2) an individualized education plan (IEP), (3) special education services, (4) related services, (5) due process, and (6) a least restrictive environment (LRE). This law has been reauthorized six times, with a summary of changes for each authorization included in Table 1. This law mandates the education of all students in their least restrictive environment (LRE).

### **Rulings**

The United States Supreme Court has ruled on cases about educating students with significant disabilities. Circuit courts have provided additional guidance on the LRE for these students. From these cases come what are called *tests*. These tests provide guidance on what makes an environment least restrictive. The tests used can come from the United States Supreme Court or from the circuit court where the case originated, or if the case is being heard in a circuit where a precedent has not been set, due process hearing officers can *borrow* rulings from other circuits to make decisions on cases they hear.

The majority of cases for students with SD concerning LRE are determined in due process hearings. These cases are decided by a due process impartial hearing officer (IHO), using guidance from previous rulings. The IHO listens to testimony from the state or local education agency (SEA or LEA) and from the parents or guardians and/or expert witnesses of the student who is the subject of the case. The hearing officer then applies the test(s) deemed appropriate

and comes to a conclusion as to the legality of the placement under question. Many due process hearings are collected in a database called *Special Education Connection*.

### **Due Process**

Due process is granted by law for all students with disabilities. During an Individualized Education Program (IEP) meeting that must occur at least once annually, a document called “Procedural Safeguards” is reviewed with parents. In this document the rights of the student are outlined. Due process is one of these rights. Timelines for filing a due process complaint, for a response from the agency/person cited, and for a hearing to take place are all outlined in this document. A vast majority of all cases for students with significant disabilities never make it to circuit courts, and a significantly smaller number make it to the U.S. Supreme Court. Due process hearings offer a wealth of information about the legality of environments for students with significant disabilities. My research will mine these hearings to compile data for SEAs, LEAs, and educators so they can design placements for students with SD that are legally defensible. The linearity of placement options may be exposed. Parents of students with significant disabilities may use due process as a last ditch effort to remedy for what they feel are inappropriate placements for their child.

### **Parents**

Parents of students with significant disabilities have strong feelings about the environments their children are educated in, especially parents who resort to due process to gain access to the environments they deem most appropriate for their child. These parents identify problems with their child’s placement, and if they feel their voice is not being heard during the IEP process, they may seek a legal remedy. Parents who access due process want what is best for their child. These parents help identify what placements/environments are legally defensible.

## Research

This literature review includes research on a Least Restrictive Environment, a Free Appropriate Public Education, and Individualized Education Plans because these three areas are the key to understanding student placements along a continuum. Research on Least Restrictive Environments, Free Appropriate Public Education, and Individualized Education Plans seem to focus on three major areas. The three areas include access (to curriculum and peers through inclusion and in sheltered settings), practice (which includes strategies and interventions for managing students with significant disabilities), and parent perception. Of these three areas there is a great deal of focus on access and practice and less on parent perceptions. However, all three are important and can give policymakers and practitioners information to consider when determining where students can access general education curriculum most appropriately.

The first area is research that focuses on environments where students are served. These could be inclusive environments, where students with SD are included in general education classes. It could also be reverse inclusion, where typically achieving students come into self-contained classrooms to interact with SD students there.

The second is literature researching what strategies or practices are being used in inclusive settings for students with significant disabilities. In this category both professional development and pre-service training are included because this research helps develop strategies and practices. The first two areas may overlap slightly, but elements of pre-service training and professional development set the second area apart.

The third is how parents perceive their child's education. This area includes parent views on educators who serve their child, how well education agencies communicate with them, and how comfortable they are with the educators and the school. This aspect of research is vital to the



proposed study because parents or guardians are the ones accessing due process to rectify what they feel is wrong with their child's education.

It is important to consider that not all parents raising children with disabilities have the physical, emotional, and monetary resources to seek due process as a means to redress what they see as inequities in their child's education. As noted in Table 2, parents of students with significant disabilities may fall into one of five general categories. The behaviors engaged in by parents of students with these disabilities may or may not mirror behaviors exhibited by parents of students with mild to moderate disabilities when they find out about and try to cope with losing their dreams of a typical child.

Understanding where and how students with SD are educated, how general and special educators go about helping these students access the content in general education classes and sheltered settings, and how parents perceive the education of their children all seem to have direct bearing on whether parents seek legal recourse.

### **Least Restrictive Environment**

Access to a Least Restrictive Environment (LRE), which includes general education settings, is the first area pertaining to this research, meaning that researchers focus on how and where to include students with significant disabilities in general education settings. Spooner, Dymond, Smith, & Kennedy (2006) note that "physical presence is an important step toward access and when students are in separate sites there are major barriers in providing Access to the General Education Curriculum" (p. 278). Researchers who study students with SD are finding, according to Agran, Wehmeyer, Cavin, & Palmer (2010), that "there is now an emerging evidence-base documenting that students with significant disabilities can gain access to the general education curriculum and documenting practices to promote such access" (p. 163).

Access not only includes general education settings but also includes teaching common core state standards in a sheltered setting. Spooner et al. (2006) find “more investigation is needed to determine whether access in a segregated setting produces the same outcomes than access provided in an inclusive setting” (p. 280). While debating this question, however, researchers find that while it is important to promote access to academic subjects, the social aspect is also important. Carter, Sisco, Chung, & Stanton-Chapman (2010) state that “although current discussions of educational policies and practices often emphasize academic performance and accountability, the interactions children have with their peers play a central role in promoting learning, relationships, and quality of life” (p. 72).

Reasoning behind educating students in their least restrictive environment includes a focus on academic, social, and life skill acquisition. A subset of this research focuses on educating students with significant (severe) disabilities. The term *significant disabilities* is now the preferred designation in much of the current research. The reason for this interest is that students with SD are marginalized, at times, in our education system because their needs are much more diverse than more typical students (Alquraini & Gut, 2012; Obiakor, 2011; Rozalski, Stewart, & Miller, 2010). This marginalization has cost and continues to cost in three ways. The first cost is monetary; the second and third are human costs. All three costs impact all of humanity. First, we use tax dollars to pay for costly court cases when students with SD are not educated in their least restrictive environment (LRE). Second, the student with significant disabilities student pays when the moral endeavor of educating all students is not honored. Finally, humanity also pays when these students, through their education, are not prepared to be as independent as their physical and cognitive abilities allow (Ryndak, Ward, Alper, Storch, & Montgomery, 2010). Knight, Browder, Agnello, & Lee (2010) note that “acquiring academic

competence can increase opportunities for self-determination through having more tools to gain information and demonstrate ability” (p. 1). One interest in research about students with SD focuses on where and how these students are educated. The U.S. Department of Education (2013) describes student placements using the following statistics: 46.2% of students with multiple disabilities, 48.8% of students with intellectually disabilities, and 33.7% of students with autism spend the majority (i.e., 60% or more) of their school day in a special education classroom. These percentages represent a significant decrease over the past decade in the number of students who spend 60% or more of their day in a special education classroom. In other words, students with SD are now spending a greater portion of their day in a general education setting.

There may be a variety of reasons why a portion of students with significant disabilities spend the majority of their time in a special education classroom. Some students with significant disabilities are so medically fragile that they are accompanied by a full-time nurse. There may also be students who, for a variety of reasons, vocalize loudly and often during the course of their school day. General education settings may not be appropriate for them. The negative impact of their presence may impede the learning of their general education peers. It is possible that for some of these students, spending 40% of their school day in a general education setting is all they can manage. However, it is also clear that, based on an individualized education plan, collaboration between general and special educators, and better education of general educators on how to include students with disabilities this statistic could be vastly different.

The Individuals with Disabilities Education Improvement Act (IDEIA) identifies what is deemed an appropriate placement for students by stipulating that students with disabilities are to be educated with their typically achieving peers unless the “nature and 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.” Proposed in this law is a “continuum of services.” At one end of the continuum is a general education class with typically achieving peers, and at the other end is hospitalization. This continuum is linear, and students can move to and from one level to another as they progress or regress (Taylor, 2004, p. 220).

IDEIA PL 108-446 does not identify specific educational settings for students with significant disabilities. This is the case for several reasons. Every child is different, and an educational setting that may work for one may not work for all. Each case ruled on by the U.S. Supreme Court and circuit courts identifies parameters that help others determine appropriate placements on a child-centered basis. Settings available for students with significant disabilities in a public school are varied. Carter et al. (2010) identify the settings in this way: “we coded the school settings in which social interaction data were gathered as (a) general education classrooms, (b) special education classrooms, and /or (c) non-classroom school settings (e.g., cafeteria, hallways, and playgrounds)” (p. 66). This identification of general education settings is very broad and may fail to take into account the diversity of academic settings within a school.

These general education settings generally include structured, semi-structured, and unstructured settings. The settings have varied academic requirements, with structured settings being the most demanding. These designations (structured, semi-structured, and unstructured) are to be used as an aid in analyzing the data. Structured academic settings are where the output required of students is very rigorous if students are to meet core standards. They include English language arts, math, foreign languages, science, and social science classes. Students with disabilities may be included in a structured setting to work on social skills, to approximate typical student behaviors, to learn content-related material that has been modified, or for some or

all of the above reasons. For students with SD, placements in these demanding settings may be denied. There are semi-structured settings where student output is more flexible. These include practical or fine arts classes where student output is often accommodated or modified to fit the needs and abilities of the student. Student growth is measured from an entry level to an exit level regardless of whether the entry level even approximates that of typically achieving students. There are also settings that are unstructured. These include passing periods, recess, or lunch. During these times, students can interact with peers in a wide variety of ways. These unstructured times can be engineered loosely, so that students with and without disabilities have the chance to interact in safe but lightly controlled ways.

**Structured.** Structured settings are some of the most complex and highly demanding in a school. Mastropieri and Scruggs (2001) as quoted in Carter and Hughes (2006) indicate that “high school classrooms are characterized by increased academic complexity, faster instructional pacing, lecture-dominated instructional arrangements, heightened teacher demands, and greater expectations for student independence” (p. 175). Researchers find that some students with significant disabilities may benefit from exposure to just such structured times during the school day. These placements may be chosen because the curriculum can be modified so a student can have interaction with similar content at their ability level in the general education classroom.

It is noted by Spooner et al. (2006) that accessing the LRE for students with cognitive disabilities is hampered by “public accountability systems, and high stakes testing” (p. 278). The rigor students and teachers are accountable for makes it difficult for public educators to contemplate including students with cognitive deficits in their classrooms because they take time that may not then be used to help students who have the potential to perform well on the high-stakes testing. Many individuals in state departments of education, public instruction, and

research are aware of this dilemma and are addressing it by “analyzing academic content standards and creating links to alternate assessments for students with significant cognitive disabilities” (Spooner et al., 2006, p. 279). This move may make it more feasible for teachers to include students with significant disabilities in their structured settings. This addresses the need for alternative assessments but does not address alterations necessary while adapting the curriculum for students with significant cognitive disabilities. Spooner et al. (2006) identify four approaches that may be used to help students with intellectual disabilities access general education curriculum. These are “peer supports, self-determination, universal design for learning, and teaching and accessing content standards” (p. 278). These four strategies have varying degrees of research behind them, and each is more or less suitable for structured times during a school day.

Science is considered a structured setting during a school day. One participatory action research study using Universal Design for Learning (UDL) to adapt curriculum for students with significant cognitive disorders (SCD) done by Dymond et al. (2006) found that “strategies for universal design have not adequately addressed the needs of students with SCD. Many of the examples in the literature focus on the use of computer technology with limited attention to other methods for enhancing the learning of students with SCD” (p. 293). Other studies address additional strategies that may be appropriate for accommodating students with SD in a general education classroom.

**Semi-structured.** When researchers consider a semi-structured setting, a variety of factors may be addressed. One factor may be the identification of an area in which students with significant disabilities have strengths or interests for possible employment. Students may show a talent or interest for art, cooking, woodworking, or metals. Agran et al. (2010) studied students in

a food preparation class and focused on a Self-Determined Learning Model of Instruction (SDLMI). They state:

Students who learn effectively set learning goals and objectives to reach those goals and then use problem-solving and self-regulation skills to tackle the activities to achieve those goals, all components of instruction to promote self-determination. (p. 164)

This content area lends itself well to learning self-determining strategies. Researchers find that having access to these classes may help students with significant disabilities identify skills that are marketable when they exit their public school education. Another consideration is to expose students to classes that may provide skills for independence. Cooking, cleaning, and home repair training all facilitate skills necessary for students with SCD to become more independent as does service learning. Researchers find that through service learning, these skills can be honed. It is noted by Carter, Swedeen, & Moss (2012) that after service learning sites have been identified, “staff can turn their attention to matching individual students with significant disabilities to experiences that have particular relevance to their own current and future goals” (p. 50).

Service learning opportunities provide students with a chance to build interpersonal skills, work on IEP goals, and gain experiences to put on a résumé. Semi-structured settings may also provide exposure to possible leisure skills SD students may enjoy being engaged in. This may include music, art, and physical education. Exposure to and knowledge of these kinds of activities meaningfully enrich their lives.

**Unstructured.** Unstructured settings have been investigated by researchers, as well. These settings provide opportunities for typically achieving and students with significant disabilities to interact and become comfortable with each other. Typical students can volunteer to

help less able students by getting food trays or helping students move from one room to the next safely. These exchanges foster a level of familiarity so each set of students is more relaxed with the other. Casual, unstructured interactions allow peers who have had exposure to students with SD to pursue an acquaintance unhampered by the demands of a classroom, or under the eye of an adult. The following researchers find that unstructured settings promote interactions that are more representative of what most typical student engage in and are more like real-life exchanges.

In an analysis of 13 studies by Hughes et al. (2012), students worked on social and communication skills in their self-contained classrooms in six of the studies, in special education self-contained settings in one study, and in general education settings in six others. Students with significant disabilities then had the chance to generalize their knowledge in unstructured settings such as the cafeteria, in an outdoor courtyard, in the hall, in locker areas, on the school field, or in their self-contained classroom. The chance to generalize in more unstructured settings allowed students to practice communication in a more authentic, real-life-like setting. These 13 studies represent how researchers are looking at unstructured settings during a school day.

All these studies validate the idea that students with SD are able to generalize skills to unstructured settings when given the opportunity during the course of a school day. However, as noted in this research, some students with SD are more successful than others at generalizing new skills. These three general education settings provide opportunities for students to be included with their typically achieving peers and have access to general education curriculum.

**Inclusion vs. sheltered/segregated.** Inclusion as defined by Causton-Theoharis (2009) “is a way of thinking—a deeply held belief that all children, regardless of ability or disability, are valued members of the school and classroom community” (p. 37). Sheltered or segregated settings are those where students with significant disabilities may have a majority or all of their



education. There are differing opinions among researchers about whether inclusion or sheltered settings are best for students with significant disabilities. Doyle & Giangreco (2013) identify four guiding principles when considering inclusive practices:

It is less dangerous for a student with intellectual disabilities to be placed in a general education classroom with the appropriate supports and accommodations than in a special education classroom. This is logical because inclusive environments provide more normalized opportunities to: (a) engage with varied and interesting curricula, (b) interact with nondisabled peers, (c) access natural supports, and (d) learn routines of daily life, such as following a schedule and being prepared for class. (p. 62)

There is a deeply held belief that if you err in placing a student it should be an error of placement in a more inclusive setting. A careful analysis of due process hearings may shed light on whether this belief is shared by parents.

***Inclusion.*** The term *inclusion* is not found in the Individuals with Disabilities Education Improvement Act (IDEIA) PL 108-446. However, this term and others, including *full inclusion* and *integrated services*, are used by courts when framing rulings. These terms in recent years have been favored over the term *mainstreaming*, which has been used in the past to identify placement in a general education classroom. A case that identifies mainstreaming as problematic is the *Oberti v. Bd. of Educ. of Clementon Sch. Dist.*, 995 F.2d 1204 (1993). In this case, an eight-year-old student with Down syndrome was removed from a regular education classroom and placed in a special education class. This case deems that if a student can be educated in the general education setting “mainstreamed” with supplementary aids and services, that is more desirable. In this case, they also found that the school may still be violating IDEIA if sufficient efforts have not been made to include the student with typically achieving peers. Different circuit

courts use different U.S. Supreme Court tests to base their rulings on. This court identifies the Daniel R.R. Test, cited above, as superior because it is more clearly defined. The test was used to formulate their ruling. Out of the Oberti case came guidance for those dealing with inclusive practices, which later came to be known as the three Oberti Factors. These factors are that inclusive practices should ensure the following: (a) reasonable efforts have been made to accommodate students in the general education classroom, (b) a comparison of benefits has been made between the general education classroom with “supplementary aids and services” and the special education classroom, and (c) any possible negative impact of inclusion with typical students in the general education class has been identified (801F. Supp. 1392).

**Sheltered/segregated.** Other researchers study students in sheltered or segregated settings where common core state standards are taught and modified for these students with SD. A study of students in a sheltered setting by Saunders, Spooner, Browder, Wakeman, and Lee (2013) indicated that word study and comprehension from common core standards can be taught using systematic instruction. This study used a modified grade-appropriate text to introduce students with intellectual disabilities to what other students at that grade level were learning. This study advocates teaching common core state standards in a sheltered setting using “evidence-based or research-based practices that have been found to be effective with students with severe disabilities” (p. 29). Because these students are in a setting apart, very explicit instruction and strict adherence to a lesson structure may enhance student learning. Saunders et al. (2013) state that “keeping the same lesson structure across story-based lessons also helps students know what to expect and how to respond, maximizing instructional time” (p. 27). Skilled educators and researchers are working to find strategies that enhance learning for students with significant disabilities whether in sheltered or inclusive settings. These researchers,

too, have a deeply held belief that sheltered settings may provide a comprehensive education tailored to needs of students with significant disabilities while adhering to the mandate that students have access to common core standards.

It is important to note that at times a segregated or sheltered setting is more appropriate for some students. In *Beth v. Van Clay*, 282 F. 3d 493 (2002), Beth, a 13-year-old girl with Rett Syndrome (people, predominantly girls, with this syndrome are often nonverbal, have an extreme lack of control over body movement, and need help with toileting) had been educated until early in her seventh grade year in a general education classroom. Beth was so heavily impacted that she used an eye gaze board to communicate and as a seventh grader was working on a preschool skill level. This court case upheld the district's recommendation that Beth be placed in a special education classroom called an Educational Life Skills program to continue her education. Reverse mainstreaming meets the demands of the law and may be the best available option because of the fragility, behavior, or level of an SD student. Because this program had a reverse mainstreaming component, Beth had access to typically achieving peers.

Reverse mainstreaming occurs when typically achieving students are placed in a homeroom classroom for SD students. These typically achieving students serve as peer tutors for students with more significant disabilities. These students may assist the teacher with the implementation of IEP goal work or help by modeling appropriate behavior in social situations. The use of peer tutors can be as varied as the students they serve. A meta-analysis done by Carter et al. (2010) found that "although almost all of the reviewed studies reported some increase in interaction measures, very few studies documented increases in prolonged interaction among these students" (p. 74). Even though exposure may not be continued after an initial interaction in the classroom, it does increase interaction with a typical peer. Access to peers satisfied the intent

of the law that SD students have access to peers who really are typical. Beth's curriculum was designed to meet her academic needs, her daily health care needs, and her need to access typically achieving peers. The court deemed that this placement was appropriate for Beth, given her significant disability.

**Curriculum.** Over the past few decades, curriculum for students with significant disabilities has evolved. This curriculum has been called functional curriculum. Functional curriculum may include different domains of instruction, such as academic, social, and/or life skills. Trela & Jimenez (2013) state, "functional curriculum became a label for a parallel, predetermined set of specific skills and activities for students not following the same course of study as their peers in general education classes" (p. 8). Criticism of functional curriculum has included the notion that it is a one-size-fits-all approach. Opponents indicate that most of the instruction in classes using functional curriculum has all students receiving the same content, whether or not that meets their needs.

There are at least two ways to circumvent this problem. One is to move from the idea of one size fits all to instruction which meets the needs of the individual. The other idea is to modify the core. Some opponents of functional curriculum may not feel that the curriculum in itself is the problem. They feel that it is used incorrectly. Advocates of designing curriculum that meets the needs of students with significant disabilities feel that students may need a very modified curriculum delivered in a sheltered setting but that the instruction should be personalized.

The following researchers propose a change in point of view. This paradigm shift is a different way to look at the continuum of placements. The shift advocated by proponents include a name change from Functional Curriculum to "Personally Relevant Curriculum," which is a

term coined by Hunt, McDonnell, & Crockett (2012) as cited in Trela & Jimenez (2013). Trela & Jimenez (2013) indicate that “*personally relevant* curriculum modifications consider how access to and progress within the general curriculum creates natural opportunities for broader school and life experience” (p. 118). This shift would indicate a focus on what individual students need. Indeed, they may need a curriculum modified for them, but shifting the focus from the curriculum to what individual students need would enable those providing the curriculum to choose something that is relevant to that particular student (Trela & Jimenez, 2013). Modifying the core is also an option for some students with significant disabilities because they have the cognitive ability to access core content at a very simplified level.

However, some researchers find that core content may not include every kind of instruction needed by students with significant disabilities. This content would include academic skills taught in inclusive classrooms. It may also include life skills taught in career and technical education classes. Other classes appropriate for students with significant disabilities would include classes that teach them about potential hobbies or recreational activities. There would need to be an alternative approach for delivering social skills instruction if an inclusive setting were chosen for every content area. Many students with significant disabilities have great difficulty identifying social cues from body language and facial expression, and they need to be explicitly taught what to do in different settings and when given different cues. Students with significant disabilities have a wide range of needs, which may be addressed in different ways.

**Diversity.** Researchers find great diversity among students with significant disabilities. Wakeman, Karvonen, & Ahumada (2013) state, “this population [students with moderate to severe disabilities] represents a very heterogeneous population with diverse skills and needs” (p. 6). Skills may range from no accurate cognitive measurement available to two standard

deviations below the mean, meaning below a standard score of seventy. Great diversity also exists for these students physically. Students may be immobile, requiring wheelchairs and standers to facilitate movement and position changes. They may be able to wheel their own chairs. They may also be able to walk. Other differences include the way these students communicate. They may not communicate; they may communicate with eye gaze assistive technology, through gestures, or through sign, or they may talk. This diversity requires teachers to vary instruction and curriculum so each student has access to the kinds of knowledge best suited to their stage of learning in multiple domains.

**Communication and literacy.** Students who have other visible disabilities may have bright minds, but because they are unable to communicate verbally or physically, it is difficult to know what they know. Students who have difficulty communicating are often denied a “literate identity,” a label coined by Agran (2011, p. 89). Some of these students are unable to verbalize. Others may lack mobility. Some have both problems. These two issues lead to difficulty finding a way to determine how much students understand of what is being presented to them. While talking about teaching literacy to people with severe disabilities, Agran (2011) said, “for people with severe disabilities who may have personal or idiosyncratic ways to express their literacy, such cultural membership [membership in a literate society] is denied” (p. 89). A question to consider would be, do we deny access to literacy because we are unable to determine exactly how much is being assimilated? Because communication is a barrier that limits what we know about what students with SD are learning, it is assumed, at times, that they are not learning or aren’t interested. Could this assumption be faulty? If so, we may be denying students the quality of life that comes from vicarious experiences encountered through literacy. Quality of life is at

least partly about the mental, physical, and emotional stimulation, which comes through education.

**Instruction and assessment.** Teachers who educate students with SD have atypical circumstances to consider. Educators working with some of these students find it difficult to quantify their cognitive ability or academic achievement, in part, because these students may not be able to communicate well physically or verbally. Determining what to teach and how to know if students are grasping the information may require educators to watch for very subtle signs. These may include body language, including the angle of the head, where the eyes are focusing, lip or mouth movement, and finger or limb movement. These motions may give educators a clue as to what is going on inside a child's head. Even though output is very limited for some students with SD, they still deserve the best attempts by educators and others to stimulate their minds and bodies. It is the opinion of Causton-Theoharis (2009) that "students with the most challenging learning needs deserve more contact time with the most trained teachers in a school" (p. 39). Teachers educated to instruct students with SD are able to work most effectively with them. Research about how to determine what students with SD know and how they demonstrate that knowledge could help special and general educators include students in general education more frequently, and to better effect if an array of opportunities has been identified.

Several researchers find that accessing inclusive settings for these varied students requires collaboration among administrators, general educators, and special educators. No one stakeholder can make decisions for the diversity represented by students with significant disabilities. It is much easier to find an inclusive setting for a student with a cognitive score near seventy who can move and communicate in a more typical fashion than it is to include a student

who has an IQ measurement that may not be accurate, is not mobile, and can't communicate.

However, Doyle & Giangreco (2013) state that

too often high school students with intellectual disabilities are not afforded the opportunity to explore a wide variety of content. This can occur if teachers mistakenly assume that engaging in rich and interesting content is less important for these students. Quite to the contrary, a rich life of the mind affords all students with the chance to experience new learning regardless of the quantity. (p. 65)

According to researchers including Bennett & Gallagher (2013), Doyle and Giangreco (2010), and Lynch & Allen (2007), it is important for a variety of reasons for students with significant cognitive disabilities to be included in general education classes. Students with significant disabilities gain more knowledge about the world and themselves with each chance to experience a wide variety of learning opportunities.

**Available placements.** Possible placements should be thought of as an array or a smorgasbord of choices from which to select an appropriate fit for students with significant disabilities. Those choosing from this array of general education settings should consider the strengths of the students being placed. These students have gifts, which should allow them to access their peers in an environment where their interests and love of learning can be fostered. They may not necessarily be able to compete with typical peers, but they can share an enthusiasm for the things they are learning, thereby enriching themselves and the lives of the students around them (Carter & Hughes, 2006). True individualization comes as strengths and desires of students with significant disabilities are considered, though their desires may be expressed unconventionally. Their individual strengths can lead to other skills. This is true individualization, not a linear continuum that moves students lockstep toward some



predetermined set of standards that have been unilaterally adopted as a one-size-fits-all solution to educating our diverse children. Arbitrarily determining the amount of time a student with significant disabilities spends in an inclusive setting does not foster customized placements. Each student needs to be carefully and thoroughly evaluated to determine what settings are going to facilitate overcoming their weaknesses and take advantage of content they are interested in. These students need exposure to a variety of classes, in different domains and content, to determine strengths and weaknesses.

The reason exposure to all domains and content is valuable is because students do not know anything about what they haven't been introduced to. Students are unable to form an opinion about areas they have not been exposed to and therefore cannot make informed choices about their curriculum. Exposure in different settings may trigger a love of learning in a specific domain. Opportunities to sample a wide variety of placements afford the chance for growth and development. Chances to accept or reject different content areas broaden and deepen knowledge about themselves and their world. Lives are enriched when students learn new things about themselves by becoming familiar with new areas of knowledge. Too often the old linear model is employed because it makes lives of educators easier. Simply because the placement is available does not mean it is appropriate.

A least restrictive environment for one student may not be least restrictive for another. Any given student may have a variety of environments, each least restrictive for different reasons. Supporting the idea of an LRE is cited by Ryndak et al. (2010), who indicate that research supporting inclusive education has the following student outcomes: "increases in appropriate social behaviors, increased interaction with others, more positive affect, increased friendships, and improved communication skills" (p. 38). It was surprising to note that

approximately one third of the studies about least restrictive environment reviewed for this dissertation failed to identify the type of school setting.

### **Special Education Law**

Rozalski et al. (2010) state, “since the inception of the Individuals with Disabilities Education Act (IDEA), there have been a number of court decisions that have greatly influenced how parents and schools negotiate the, at times very complicated, LRE decision-making process” (p. 153). Educating students in their least restrictive environment (LRE) is consistent with the law. Inclusive settings benefit students with significant disabilities and their typically achieving peers. Doyle & Giangreco (2013) note that “research has consistently indicated that the presence of students with disabilities in general education classes tends to have either a neutral or positive impact on students without disabilities, academically and socially” (p. 66).

Case law is replete with examples of local education agencies or educators placing students in settings merely because that is what is available, not necessarily in settings individualized to a student’s needs. Some of the cases include *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S.176, 102 S. Ct. 3034, (1982), a U.S. Supreme court case; *Daniel R. R. v. State Board of Education*, 874F. 2d 1036 (5<sup>th</sup> Cir. 1989); *Roncker v. Walter*, 700F. 2d 1058, 1063 (6<sup>th</sup> Cir. 1982); *Sacramento City School District v. Rachel H*, 14F. 3d 1398 (9<sup>th</sup> Cir. 1994); and several cases from circuit courts of appeal. Too often placements of students are made because of convenience. The local education agency has a certain continuum available, and all students are expected to fit into this mold. If true individualization is taking place, students will be given opportunities to choose from a variety of domains, settings, and skill areas.

The IDEIA PL 108-446 mandates the education of all students with disabilities. It identifies six specific areas that need to be taken into account to ensure that a student is receiving the education to which they have a fundamental right. Their education has further been defined by United States Supreme Court rulings, which have identified tests and factors to be considered when determining if a student is being educated appropriately. Due process hearings use these and other circuit court rulings to define their findings in individual cases. Due process hearings are rich in information, which needs to be tapped to inform educators and policymakers and give them a broader base from which to consider practice and policy. These hearings also allow us to delve into the minds of the caregivers who interact on an intimate basis with students with significant disabilities. They are trying to ensure a quality of life that addresses the physical, mental, and emotional needs of their child. Due process hearings can help us answer questions about settings that comply with the law and align with what parents agree is best for their children. Kayama (2010) found that “parents also emphasized the importance of individual rights of children, and respect for their own contribution” (p. 121). Due process hearings can provide parental insights about their views on the rights of their children.

Since legal rulings shape how students with significant disabilities are educated, it would seem appropriate to study them to determine why parents seek redress through this means allowed by the IDEIA. These hearings have a great potential to tell us what settings parents deem appropriate for their children. This information has the potential to help policymakers and educators identify and perpetuate a variety of educational models for students with significant disabilities. Settings have an impact on how students are educated, and education is what prepares students with significant disabilities for their future.

Research elements that influence the education of students with SD include the Individuals with Disabilities Education Improvement Act, which allows students to receive a FAPE. Their IEP identifies what these students need to work on to learn and grow. Educating students in their LRE is mandated by law, so that students are educated where they can learn and grow from the curriculum and from their peers. Due process hearings are used by parents, guardians, and state and local education agencies to ensure the rights of students are being met. Parents have a role to play in seeing their children get the education they are entitled to under the law. Each of these areas involves looking at the continuum of placements to see how students with SD are educated.

**Least restrictive environment.** LRE has been hotly litigated, and out of that litigation has come some guidance. The Third, Fifth, and Eleventh Circuit Courts use the Daniel R.R. Test, named after a case by that name cited above. The ruling from this case identifies two considerations when looking at the LRE. They are, first, to determine if a student can be educated adequately in a general education classroom with supplementary aids and services and second, to determine if a student has been “mainstreamed” as much as appropriate. The Fourth, Sixth, and Eighth Circuit Courts use a different test identified as the Roncker Test, which is also named after a case cited above. This test requires schools to show that a segregated facility offers superior educational services and why. If the same services can be offered in the general education classroom, that classroom is deemed the LRE unless benefits of a general education classroom are far outweighed by the benefits gained in a segregated setting. The Ninth Circuit Court combined the Daniel R.R. and the Roncker Tests in the *Sacramento City School District v. Rachel H.*, 14F. 3d 1398 (1994) case. It has been determined by several courts that cost is a factor to be considered in educating students with disabilities because disproportionate spending

on one child deprives other students of necessary funding. Inherent in all these cases is parental concern for the wellbeing of their children in educational settings. Research focusing on the outcomes of due process hearings is vital for school personnel and parents to determine what legally defensible placements are. This guidance can aid education agencies in making placement decisions.

These cases highlight the concern parents have for the education of their students with significant disabilities. For various reasons, the parents in the federal cases cited above sought redress for what they perceive as being amiss with their child's education or placement. They frame the worry parents identify as they seek due process on behalf of their children. Studying due process hearings can help educators and local education agents understand what actions trigger parental concerns so that due process is considered necessary.

**Free appropriate public education.** The term *free appropriate public education* (FAPE) is about giving students with disabilities what they need to profit from their education. The law was written to ensure that students were getting an education that would provide benefit to them. The IEP should be developed with the child's needs in mind, and those needs should be met so that students are able to make progress in their education. After the initial law was drafted, parents of children with significant disabilities became more aware of the rights of their children, and with the backing of the EAHCA, they began to seek redress for perceived inequities in their child's education.

Supreme Court cases have defined what FAPE really means when dealing with students with disabilities. One case that has gained a great deal of attention is *Board of Education of Hendrick Hudson Central School District v. Rowley* (1982). This case is about a first-grade student who was hearing impaired. Parents agreed with the parts of the IEP that provided speech

services, a frequency modulated (FM) system, and tutoring. This child was being educated with typical students in a general education kindergarten class. Their point of disagreement came because the school was unwilling to provide her with a signing interpreter for her academic core subjects. This ruling in 1982 was the first interpretation of the EAHCA by the Supreme Court. This case has established precedence for cases being ruled on to the present day. The findings identified a twofold test to determine if a student is receiving FAPE. The questions to be asked are these: (1) has the state complied with the procedures set forth in the act, and (2) is the resulting IEP reasonably calculated to enable the child to receive educational benefits? The findings also include the term *meaningful benefit*. This term includes the idea that the benefit must be consequential.

A case from the U.S. Court of Appeals for the First Circuit titled *Timothy W. v. Rochester School District*, 875 F.2d 954 (1989) gives further clarification about students with significant disabilities. This ruling indicated that students with the most *severe* disabilities were to be given priority and not be excluded from educational services. This ruling sheds further light on what FAPE means. The Sixth Circuit Court ruling on *Doe v. Smith*, 879 F.2d 1340 (1989) involved a student with *severe* disabilities. The Sixth Circuit stated that the “benefit must be more than *de minimis*,” which means that their education needs to provide benefit that is more than trifling. These three cases illustrate that students with significant disabilities are to be educated in such a way that they receive benefit from their education.

A later iteration of EAHCA termed IDEA PL 105-17 includes a requirement that parents be informed of their rights under the law through “Procedural Safeguards.” Procedural safeguards are sometimes known informally as parental rights. Procedural safeguards inform parents of their rights and the rights of their children. This notification includes, among other

things, information about child find (which means the process of identifying students who may potentially have a disability), destruction of records, parental consent, FAPE, state complaint procedures, due process procedures, discipline, and confidentiality of information. These safeguards also ensure that students are receiving a FAPE. It is formalized for each student at least annually through their IEP. Measurable goals identified in IEPs help determine if a student is receiving FAPE.

**Individualized education program.** The IEP is a legal document containing student demographic information, present levels of academic and functional performance, special factor consideration, goals, a list of services, assessment information, transition information, graduation information, and participant information. The purpose of the IEP is to design goals that meet a child's educational needs and evaluate progress on those goals. The IEP is at the heart of identifying a child's educational delivery system.

One section of the IEP identifies the student's present level of academic and functional performance. Based on this performance, goals are written that address progress in deficit areas, how progress will be measured, what accommodations will be afforded, and how the student will be tested. Parents are to be notified of their child's progress as frequently as progress is reported for students in general education. This ensures that a child's educational goals are met by creating a quantifiable assessment of progress.

The IEP is to be developed with some or all of the following team members: general educators, special educators, a local education agent a person employed by the district who is knowledgeable about available funding within the education agency, any related servers the child may access, and parents or guardians of the student, or the student if they are 18 years old and emancipated. This collaborative process is at the heart of IEP development and is protected by

law. The IEP stipulates where and how students are to be educated, outlines the level of service, and identifies transition services along with supporting outside agencies. This legal document is to be reviewed at least annually as well as at any time requested by any team member. It is to be followed to ensure the student is receiving the services identified in the document.

The court cases listed under the FAPE and LRE sections also pertain to the IEP document because the IEP is the document that determines if a student is really receiving the education they are entitled to in the least restrictive setting. The tests these cases identify apply equally well to writing and implementing the IEP.

### **Student Rights**

Students with significant disabilities have the same educational rights, mandated by the IDEIA PL 108-446 as typically achieving students, which include the right to a FAPE in their LRE. Ryndak et al., (2010) state that “inclusive education has been considered a practice that not only is consistent with civil rights, but also is a way to alleviate the discouraging outcomes for adults with significant disabilities” (p. 39). The Declaration of Human Rights drafted by the United Nations has 30 articles, five of which have direct bearing on the rights of people with disabilities to have a full life and an opportunity for education. These students have the right to be stimulated so they have the opportunity to grow and develop. The Individuals with Disabilities Education Improvement Act (IDEIA) PL 108-446 is about ensuring that these students have an enhanced quality of life.

IDEIA also addresses two other areas: the education of students using state-identified curriculum appropriate to their age and interaction with typically achieving peers. Accessing state-identified curriculum means students with significant disabilities are introduced to a broad array of content. This exposure allows them to learn about themselves and about their world.



Accessing curriculum means being successful at learning tasks drawn from grade-level content. Meaningful curriculum is linked to grade-level state core standards, but still differs for students who have significant disabilities.

Modified grade level tasks can support progress that is meaningful. IDEIA also grants students the right to interact with typically achieving peers. This interaction may take place in a general education setting or in a reverse inclusion setting where typically achieving peers are placed in a homeroom for SD students. Typical peers receive benefits from interacting with their SD peers, as well (Downing & Peckham-Hardin, 2007, p. 22). These two models, general education and reverse inclusion, provide students with disabilities contact with their typically achieving peers. Looking at due process hearings to determine the kind of environment parents/guardians of students with SD desire for their children will aid educators in avoiding pitfalls when determining settings for them. Because the continuum has historically been linear and because there is such diversity among students with significant disabilities, determining appropriate environments where SD students can access typically achieving peers needs to be a creative endeavor. These students have such a varied profile that finding one single environment to fit all proves problematic.

IDEIA identifies three broad categories for students with significant disabilities. These categories include students who have multiple disabilities, students who have an intellectual disability, and students on the autism spectrum who also have multiple disabilities. Autism is a term that describes children who from early childhood exhibit a mental condition that inhibits them from communicating and forming relationships with others. They may also have difficulty in using language and understanding abstract concepts. The research proposed would look at these three categories of students, with intellectual disabilities, multiple disabilities, and those on

the autism spectrum. The first group has measurable cognitive scores or intelligence quotients (IQ) that are more than two standard deviations below the mean. This means a cognitive score below 70. Some may have no accurately measurable IQ. The second category would be students with multiple disabilities. In the proposed research, a cognitive deficit would be one of the disabilities. Other attendant deficits may include orthopedic, visual, communication, or hearing. The last category would be students on the autism spectrum who exhibit cognitive limits.

The law requires that students with significant disabilities, which include the three categories mentioned above, be served in their least restrictive environment (LRE). However, as Taylor (2004) notes, “the LRE principle confuses segregation and integration on one hand with intensity of services on the other” (p. 223). Research indicates that it is possible to offer intense service in both settings. The idea of a segregated setting includes the chance to access typically achieving peers. For decades the settings for students with disabilities have been known as a “continuum of placements” from the “most restrictive” to the “least restrictive environment” (Reynolds, 1962, as cited in Taylor, 2004, p. 226). Inherent in this idea of a continuum is linearity. This implies that as students master a subset of skills on one level, they are allowed to move to the next level, where they work on a new subset of skills and then progress to the next level. Taylor (2004) states that “the assumption is that every person with a developmental disability can be located somewhere along this continuum based on individual needs. If and when the person develops additional skills, he or she can ‘transition’ to a less restrictive placement” (p. 220). This narrow linear view poses problems for educating students in a least restrictive environment. In its historical context, the continuum of placements was a step forward. The idea of a continuum of placements was conceived about 13 years before the first iteration of the Education of All Handicapped Children Act (1975 PL 94-142. Because students

have been traditionally served this way, it is difficult to think beyond this model. The continuum was a stepping-stone to help educators serve students with significant disabilities better.

However, we cannot persist in thinking of this continuum as linear if we are to serve SD students in settings that address them as individuals, with manifest likes and dislikes.

As noted before, students with significant disabilities have difficulty communicating their needs. They communicate in a variety of ways. Students who are engaging in a preferred activity are less likely to exhibit inappropriate behavior. It is not acceptable for a student to disrupt the learning of others by placing them in settings where they are uncomfortable or distressed.

Students of all ability levels will express displeasure at their setting by displaying avoidance or disruptive behavior. Sensitivity to these behaviors can give us clues to the likes and dislikes of students who can't express them through typical means. These students may express displeasure or discomfort through disruptive vocalizations or through other means. Parents are more likely to have the ability to decode their child's communication and behavior. Partnerships with parents are especially crucial for promoting success of students with significant disabilities.

**Access.** Access to a LRE includes two parts. These are access to meaningful curriculum and to typically achieving peers. Contact with a meaningful curriculum and to typically achieving peers may or may not be in an inclusive setting. Students with significant disabilities may encounter curriculum and peers in a sheltered setting. Researchers find that access to meaningful curriculum matters because ultimately students are being prepared for life after a public school setting. Very little research has been done comparing education and its correlation with post-high school outcomes. However, it has been noted by Crawford (2010) as quoted in Bennett & Gallagher (2013) that

Regardless of the type of severity of disability, those individuals who have had highly inclusive educational experiences vs. those who have had low inclusive educational experiences are more likely to have graduated from high school, participated in community activities, have been employed and have a history of paid work, and have incomes above the poverty line. (p. 103)

Questions that future researchers would want to consider are how substantially impacted the students in this study were, what skills were worked on in these inclusive settings, and what prerequisites were in place to determine which students with significant disabilities were placed in the inclusive settings that produced such outcomes. Are all students with significant disabilities able to reach this kind of successful outcome? Post-high school outcomes are one way to measure the effectiveness of public schooling for students with significant disabilities, but if this measurement is to be used well, then more information about the level of impact for these students needs to be systematically determined and documented in reporting research.

Researchers find that public schools have all the requisites to provide inclusive settings for students with significant disabilities. Access to “meaningful” curriculum and to typically achieving peers can be had within public school settings. Though schools vary, generally anyone entering a public school environment recognizes it as such. Settings that may be suitable for students with significant disabilities need to provide benefit according to the statute. It has been noted by Doyle & Giangreco (2013) that “contexts that are status-enhancing are those where students without disabilities of the same age spend time (e.g., general education classrooms, cafeteria, library)” (p. 64). The three examples identified here include structured, semi-structured and unstructured settings. They continue: “Activities that are status-enhancing are those in which students without disabilities of the same age value...participate in on a regular basis (e.g.,

membership in a school club or on a sports team)” (p. 64). These are two elective settings, and could be considered to be semi-structured. They continue: “Participation in volunteer activities, going to the movies with friends” (p. 64). These would be considered unstructured activities outside of a school day, which are on the least restrictive end of the continuum. Doyle and Giangreco (2013) also indicate that such activities must be status-neutral at the least when a student is partially included in general education settings.

In some studies, researchers fail to identify what kind of inclusive setting students with significant disabilities are in. It is imperative that the setting be identified and defined, so that better decisions can be made about how generalizable the research could be. Spooner et al., (2006) identify a major difficulty with generalizing research on LRE. They note that

researchers might test a particular approach for providing access in the general curriculum, but if one defines the general curriculum as content area inclusive classes and the other defines it as instruction in a community setting on a life skill, then claims of the effectiveness of the approach will have limited utility if consensus does not exist about whether the curriculum is valid. (p. 280)

Two different settings are identified in this quote: content area inclusive classes and a community setting. Students will have very different experiences when learning the same curriculum if they are taught in these two dissimilar settings.

Considering the environments highlighted in the research for this literature review, it would seem that researchers who do identify placements recognize the three types of settings, which include structured, semi-structured, and unstructured settings within a public school. In semi-structured classes, there is more room for flexibility in student output, and skills learned in practical and fine arts and in physical education are those needed by students with significant

disabilities for life skills and for meaningful leisure activity skills. Lynch & Allan (2007) note that

the arts were seen by the research participants as a good vehicle for social inclusion because they are about the individual, their skills, their pace, and their expression. Also, the arts are not believed to be bound by the rigid means of assessment of other subject areas. (p. 11)

Though state core standards identify proficiency levels, students may demonstrate progress from an entry level to an exit level. There are also unstructured times during a school day. During these times, students have the opportunity to mingle at will. Association with peers can occur within any of these settings during a school day for students with disabilities. Researchers find that interaction with peers has been determined to enhance the education of students with significant disabilities in multiple ways.

Access to general education curriculum and to typical peers is deemed important by multiple researchers including Agran et al., 2010, Carter et al., 2010, and Kaplan et al., 2012. Research by Spooner et al., (2006) agrees that social skills play a very important role for students with autism or intellectual disabilities in acquiring academic skills and having quality of life. Universal Design for Learning (UDL) has been touted as a means for students with disabilities to access the general education curriculum; however, as noted by Dymond et al., (2006), the “strategies for universal design have not adequately addressed the needs of students with (significant cognitive disorders) (SCD)” (p. 293). On the other hand, Agran et al., (2010) find that “there is now an emerging evidence-base documenting that students with significant cognitive disabilities can gain access to the general education curriculum and documenting practices to promote such access” (p. 163). Currently, research is being done to document

practices that allow students with SCD to be involved in general education curriculum and to be held to standards appropriate for them.

Additionally, researchers deem it important for educators to hold students with intellectual disabilities to high but realistic expectations (Downing et al., 2007; Obiakor, 2011; Smith, 2006). A mind shift is advocated by Agran (2011) as he supports allowing students with severe disabilities access to a “literate identity” (p. 89). He states that because students with severe disabilities have difficulty obtaining scores on literacy assessments, they aren’t allowed to join the literate community. Agran (2011) quoting Browder (2011) states that

most research regarding reading for individuals with severe disabilities has addressed sight word reading but has paid scant attention to the components recommended by the National Reading Panel (2000); specifically, phonemic awareness, phonics, reading fluency, vocabulary development, and comprehension strategies. (p. 90)

For these reasons and others, researchers find it important for students with significant disabilities to have access to the general education curriculum and to typically achieving peers. The reason for a particular setting to be chosen can include the need for a student to learn academic content, to interact with peers to approximate typical behaviors, or to enhance quality of life by inclusion in classes where leisure skills will be taught. How the curriculum is taught is also an important part of this literature review.

**Due process.** Due process hearings were part of the original law called the Education of All Handicapped Children Act (EAHCA), PL94-142, and have continued to be part of the law for all iterations since. Due process follows a sequence, with attached timelines, for those bringing the action and those the action cites. The person activating due process is responsible for bringing a *preponderance* of evidence to support their claim. The case is heard by an

administrative law judge, a due process hearing officer (HO), or an impartial hearing officer. These individuals are specifically trained to hear due process proceedings and formulate rulings based on Supreme Court decisions and circuit court rulings. HOs base the legality of their decisions on U.S. Supreme Court rulings or circuit court rulings. They may use their own circuit court cases, or if no legal precedent has been set in their own circuit, they may use other circuit court cases to shape their decision. Their rulings may be appealed. Parents learn how to access due process through *Procedural Safeguards* required by the IDEIA statute, which outline the rights of the student and their parents/guardians. The safeguards are legally required to be reviewed with parents at each IEP meeting. This document is written using legal jargon, and though it is reviewed, parents may still not understand enough about it to realize how to get help if they perceive difficulty with the way their child is being educated. This is problematic because students and parents have difficulty determining how to voice their concerns.

### **Practice**

Researchers who study practices and strategies educators use agree that educators need to be prepared to include students with significant disabilities. Ashby (2012) states, we do need to equip future teachers with pedagogical tools to provide high-quality instruction. Those tools do not need to be and *should* not be disability specific or based on rigid descriptions of categories of difference. Rather, they should reflect a strengths- and needs-based approach to determining supports and useful teaching strategies. Perhaps the more pressing challenge is to alter the instructional context such that students can be successful rather than focusing on remediating supposed deficits. (p. 96)

The right to be educated in a Least Restrictive Environment (LRE) must include consideration of a general education environment. Research on practice is critical to helping



general educators formulate practices that are inclusive of students with significant disabilities. The research on practice includes training for teachers who are including students with significant cognitive disabilities. Training can occur when teachers are in their training programs through colleges and universities. It can also occur through professional development. It has been determined that training may be effective but may not. Spooner et al., (2006) state that “institutions of higher learning are not adequately preparing personnel to work with today’s diverse students” (p. 277). Carter et al., (2010) also agree that teachers should be “well equipped with the range of strategies needed to promote meaningful interactions among all students with and without disabilities” (p. 75). Agran (2011) asks this question: “Are students currently receiving more literacy education, and if so, what is being taught and how; and how can we better prepare teachers to promote student literacy?” (p. 90). He advocates attending to reading components recommended by the National Reading Panel (2000) for these students, including phonemic awareness, phonics, reading fluency, vocabulary, and comprehension.

Teachers addressing the needs of students with intellectual disabilities, which is one type of student with significant disabilities, in the general education setting may not have the skills to make instructional changes. Wakeman et al., (2013) find that “recognizing the need to make an instructional change is different than having the skills to do so” (p. 6). They advocate the use of a task analysis to control the complexity of the task and to modify the amount of information to be presented, the length of the passage, the length of the assignment, and/or the length of the response required (p. 8). There are research-based practices that, if used with fidelity, will help general education teachers deliver instruction to diverse groups of students. These strategies or practices are not canned programs developed by publishers. These are research-based practices

that if implemented skillfully have the potential to improve student outcomes. This knowledge needs to be disseminated through professional development or teacher education programs.

Research has been done to promote practices surrounding the inclusion of students with significant disabilities in general education settings. When studying this research, it is often difficult to determine what kind of general education setting is being studied. Is it a structured (core academic), semi-structured (career, technical education, or fine art), or unstructured (passing, recess, or lunch) setting? Knowing what environment is being researched is necessary to assist others in generalizing that research into their practice.

General education curriculum has been designed and written for typically achieving students with accommodations suitable for students with mild to moderate disabilities. When general educators contemplate integrating students with significant disabilities into their classes, it causes trepidation. Researchers find that these teachers are very aware that they will have to modify what they are teaching to make it accessible for students with significant disabilities. Kurth, Gross, Lovinger, & Catalano (2012) state, “for example, an eighth grade history assessment on the causes of the civil war may contain vocabulary and concepts that are not accessible to a student with significant disabilities” (p. 2). Strategies for doing so, while receiving a great deal of attention from researchers, take time and effort on the part of the general educator. Through research it has been found that many educators exhibit a willingness to give these strategies a try because they recognize that they, their more typical students, and the students with significant disabilities all benefit from their effort. Some noted researchers in the field including Dymond et al., (2006) find “several positive outcomes for students without SCD, including improvements in class participation, personal responsibility, completion of work, grades, and end of year test scores” (p. 302). This finding should help other general educators be

more willing to try including students with significant disabilities because Doyle & Giangreco (2013) note:

a singular focus on future functional life skills overlooks those functional skills associated with being an adolescent such as texting with friends, attending athletic events, or participating in school performances. It also denies the student interesting academic content that is available to most students through the general education high school curriculum. (p. 65)

**Educational theory.** One theory that may help educators understand how students may develop skills was developed by Vygotsky (1978). He called this theory the Zone of Proximal Development (ZPD). The premise of this theory is that there is a zone where skill acquisition occurs. Within this zone or range, developmental independence can be achieved. Initially, when a learning task or new knowledge is attempted, a student is mentored by an adult or a competent peer. As the student gains more experience and competence, mentoring is faded until the student is performing the skill independently (Enu, Knotek, & Heining-Boynton, 2008, p. 134; Gredler, 2012, p. 116). Enu et al., (2008) recognize that the role of the tutor has had the most attention and state “that the qualities of the tutor are crucial in guiding the development of the tutee. The most important quality has been identified as the tutor’s ability to adjust his or her level of guidance to the current level of the child’s psychological functioning” (p. 135). Often, when general educators think about integrating students with SD, they are overwhelmed. If educators consider all students’ zones of proximal development and are able to structure learning tasks so that peers are able to mentor less-able students while learning themselves, accommodating students with significant disabilities in the general education classroom may appear more possible. This also allows the general education teacher to continue to meet the needs of the

typically achieving students in the class. It takes a skilled educator to manage both ends of the spectrum. Gredler (2012) states strongly that “adult interaction is essential for all students involved, in order for them to move to the top end of their ZPD” (p. 119). Teachers must meet the needs of their students who are excelling and those who need additional support while consistently addressing the needs of those between the extremes. Teachers and peers can help support students with significant disabilities in a general education classroom, but the adult still must moderate the learning of all students.

**Collaboration.** Researchers find that collaborating for the inclusion of students with SD needs to be manifest between the special and general education teachers. Ashby (2012) notes, “a disability studies framework gives teachers permission to be creative problem solvers and to reach out to others from different disciplines” (p. 96). This kind of teamwork is critical to make an inclusive model work. Through collaboration, scaffolding (which means that supports are put in place, including differentiated lessons or materials, or peer or teacher supports) for students with significant cognitive disabilities in a general education setting will foster growth. Dymond et al., (2006) note that “scaffolding for students with significant cognitive disabilities (SCD) was provided by the special educator, the general educator, and by other typical peers” (p. 305). The models that included scaffolding for students with significant disabilities promote student success. Students with SD may be seated next to their typically achieving peers. The peers provide an example of social skills, on-task behavior, and academic problem solving.

Interaction with typically achieving peers can be the goal of special educators when seeking a placement in general education for students with SD. However, in their study, Dymond et al., (2006) found that

the goal for students with SCD changed from socialization and participation to making progress on IEP goals and addressing the main concepts of the science curriculum.

Despite this change, teachers felt that students with SCD demonstrated the greatest achievement in social skills and the development of interpersonal relationships. (p. 302)

These researchers found that students made progress in several ways. There are several aspects to bear in mind when considering a setting for these students. Some of these are, what impact is the student going to have on other students in the classroom? What is the reason for the placement? What goals are being addressed for the students? Is the student to work on academic content, social skills, communication skills, self-advocacy, or other life skills? Can the general education teacher keep the integrated student in their zone of proximal development? Is the content of that particular classroom appropriate for students with disabilities? Does this placement foster growth of skills students may need when they become adults? To individualize integration, there may be other considerations specific to that student, which are very important.

### **Parents**

Parents of students with significant disabilities may not react the same way as parents of typically achieving students, simply because they are so overwhelmed with taking care of their child. School may provide the only respite care they get. These parents are so stretched mentally, physically, and emotionally that they don't have further means to seek redress for inappropriate placements. These parents care, but not knowing what is possible or available may hamper their efforts to get what they see as being a more suitable placement for their child. Professionals can make educating students with SD easier by promoting emotional connections. Kayama (2010) notes that "empathy makes it possible for professionals to think about children and their needs from the viewpoint of parents and children and to identify their problems, including unexpected

family stress on an ongoing basis” (p. 124). Parents in this study also identified the need for emotional support from professionals. Because parents of students with disabilities are under greater stress, they may exhibit five different types of behavior when made aware of their child’s disabilities. These five behavior types have been identified by Zentner and Smith (as cited in Weasmer and Woods, 2010, p. 129). They include parents who are in denial, parents with a chip on their shoulder, parents who advocate, parents who are savvy, and parents who focus on equality not equity. Parents in denial are those who don’t believe that their child has a disability because it was recently discovered. Those who have a chip on their shoulder are bitter about their child’s disability and are usually dissatisfied with both services and student performance. Parents who advocate are versed in the law and want to continue to make advances for those with disabilities. Parents who are savvy may hire personal advocates or attorneys who threaten schools with due process or media exposure. Parents who focus on equality not equity may advocate for full inclusion regardless of the severity of their student’s disability or how appropriate the placement may be (see Table 2).

Parents of students with significant disabilities, as opposed to parents of students with mild/moderate disabilities, have the charge of caring for a child who may never progress developmentally beyond an infant stage. Caring for these children taxes parents and family units to a maximum extent. MacDonald & Hastings (2010) note that “mothers and fathers of children with intellectual disabilities experience different levels of psychological distress (typically, mothers reporting more distress than fathers)” (p. 236). Some of the difficulties they deal with on a daily basis are feeding, toileting, and bathing these children. These students may need changed as an infant in an adult-sized body. They may also need to be spoon fed or fed through a tube. These students must also be bathed and clothed daily. They may have tantrums because they are

unable to make their needs and wishes known. Some of these children can offer little help with any of these tasks. This description highlights the most severely impacted children in our society. However, children with significant disabilities vary, just as typically achieving students do. These students range from this level of disability to students who may look and act more like a typical child their own age.

Parents of students with significant disabilities are responsible not only for daily care but also to see that these children are receiving the education they need and deserve under the law. These parents may be so overwhelmed that they are unable to think beyond the daily needs of their child. They may just be grateful for the respite care that school offers them. Due process hearings are pursued by parents who are able to look beyond the daily needs of the child with a significant disability, their families, and themselves and who have the physical, intellectual, and emotional energy to pursue the course they feel is appropriate given their rights under the law. These parents are pursuing a course that will shape the education of other students with significant disabilities for parents who may not have the same physical, mental, emotional, and financial resources. Parents may feel that something is wrong in their child's placement but not be able to articulate their discomfort. If educators aren't responsive by providing information about possible settings, parents may not ever be able to help educators make an informed decision about their child.

**Advocacy.** Parental advocacy can be an important part of the process of designing services for students with special needs. Because parents know their children best, accessing their knowledge helps educators find placements that parents and professionals are comfortable with. Partnerships between parents and professionals may increase satisfaction for both parties and improve outcomes for students (Blue-Banning, Summers, Frankland, Nelson, & Beegle,

2004; Murray & Curran, 2008; Nelson, Summers, & Turnbull, 2004). Nelson et al., (2004) also state, “the goal is to create a mutually rewarding situation for both families and educators by defining boundaries that produce the greatest benefits and the fewest drawbacks. One drawback that can be largely prevented through parent–educator partnerships is avoiding contention. This may include looking at individualized placements available through school environments. One reason for fostering parent–professional partnerships is that it may help in conflict resolution, thereby avoiding costly court intervention (Blue-Banning et al., 2004). In order to do this, educators must be open to parents and be seen as having a genuine concern for the welfare of the student they are serving. Again, Nelson et al., (2004) note, “it is not surprising that the experiences of families of children with disabilities with educators were far more frequent, intense, and provocative of personal reactions” (p. 163). These feelings may be magnified for parents of students with SD because placement options for these students appear to be limited. Because feelings are intensified, parents may resort to due process as a means of gaining entrance into preferred and more appropriate environments. Parents of students with SD may see themselves as disenfranchised and feel the need to fight for the rights of their students if educators are not open to being collaborative. Educators who fail to follow an approach that looks at the whole possible continuum for individualizing placements may push parents into seeking redress through due process. This reason alone is enough to warrant serious reflection on how well educators use parents in partnerships for serving students with special needs.

**Perceptions.** Through research, parents have identified indicators that facilitate collaborative partnerships. Kayama (2010) notes, “indicators of professional behavior that facilitated collaborative partnerships were identified, such as communication, equality, trust, and professionals’ commitment” (p. 120). Jegatheesan (2009) states that parents who are not totally



acculturated need educators to be aware of their culture. She writes, “it is critical for professionals to be aware of these factors to have a respectful and trusting relationship” (p. 129). Parent perceptions offer insights into what educators are or are not doing to foster healthy relationships among them. Jegatheesan (2009) and Kayama (2010) both find that parents are concerned about good parent–professional relationships. They see these partnerships as being essential for the success of their children. In addition to wanting success for their children, parents gain the ability to choose for their children if they have good partnerships with school personnel. Dunst & Dempsey (2007) note that “the way which staff relate to and support families can influence those families’ sense of control over their life circumstances” (p. 316).

These researchers find that parents have a great deal of concern for their children. Their perception of the partnership with school personnel is very important to them. This can make them feel either empowered or marginalized. Blue-Banning et al., (2004) quote Feinberg, Beyer, & Moses (2002): “there is increasing recognition that fostering collaborative partnerships with families leads to early dispute resolution and the prevention of more costly actions such as mediation, due process hearings, and litigation” (p. 168). It is critical for school personnel to help parents understand and maximize their role as partners with the school to affect their child’s education. Parents can have an important impact on how much students get from their educational experience. Policymakers and personnel need to be very aware of parent perceptions of their school because as patrons, parents can impact whether their entity will be in business for some time to come.

Research uncovering issues for students with SD include where they should be educated, what methods are effective for them, and how to help teachers be more effective with them. This research includes how parents feel about professionals and what their partnerships should look

like. The very rare parents of students with significant disabilities who have had the U.S. Supreme Court rule on their child's case and those few parents who have had circuit courts rule on their child's case, have had a voice about both the education of their child and the education of other children. Some parents have found a voice through due process hearings because practice changes as rulings are handed down. However, there is still a great deal we can learn from those due process hearings (where the vast majority of special education cases are heard) that didn't make it to the circuit or U.S. Supreme courts. Since due process hearings are where the greatest number of special education case laws are decided, it is clear that these cases can shed light on whether the continuum of placements model is working for students with significant disabilities.

Due process HOs use rulings from federal and circuit court cases to guide their decision making as they rule on cases. Due process hearings contain a wealth of information about why parents or guardians access the legal system on behalf of their child. They may pursue this course because parents or guardians have the impression that their voice is not being heard by education agencies and feel the need to access a third party. Codifying and evaluating due process hearings as proposed for this research will yield information in a useable format.

## APPENDIX B: Detailed Methods

### Method

DPHs about special education law offer vital information about the reasons parents/guardians seek this remedy for their children. Fortunately, many special education DPHs have been collected into a database called *Special Education Connection*. This database is accessible through the internet at a site called [specialedconnection.com](http://specialedconnection.com). This database is an expensive for-profit collection of cases by experts in the field. These cases are ruled on by personnel educated to hear special education DPHs. Should there be an appeal, it is heard by a SRO. The individual doing this review may have a slightly different title, but the job description is very similar for each state.

This database represents each circuit in the United States. Because the majority of decisions about students with disabilities are made in DPH, this study analyzed information from the hearings about placements. From this analysis it was possible to determine how often IHOs, educators, or parents customize for students in rigorous core classes such as science, social science, math, and English Language Arts; core classes such as physical education, fine arts, career and technical education classes; and unstructured settings such as recess, lunch and passing periods. The database identified the legality of placements and whether students with SD had access to their typically achieving peers and meaningful curriculum. It also offered insights into the linearity of placements being used by IHOs, educators, education agencies, and parents.

The database includes rulings about all disabilities identified under the Individuals with Disabilities Education Improvement Act (IDEIA). The students in these cases range from having mild to severe disabilities. The database may include decisions about personnel, physical locations, assistive technology, communication, or a myriad of other concerns parents may have.

This database is underutilized, and information contained here offers a wealth of insights into apprehensions about students with all types of disabilities.

### **Participants**

The students represented in this database include all disability types described by the IDEIA. The population addressed in this study included only three disability categories. They are students with intellectual disabilities (ID), students with multiple disabilities (MD), and students on the autism spectrum. Each student in this study also had to have an ID as one of their MDs or as a part of their autism. I chose these three disability types because diagnosing their intellectual ability with accuracy is extremely difficult. Students included in this study vary widely. Some students may look and act more like typical peers while some may be nonverbal, immobile, or both. All included students qualify because their measurable intelligence quotient (IQ) falls more than two standard deviations below the mean of 100, or below a 70 IQ.

A measurable IQ may or may not be accurate, but because some students with SD are unable to verbalize their intellect, they generate scores in an ID range. Creatively placing these students is critical. There are documented cases of students who, for a variety of reasons, have not been able to indicate their intelligence physically or verbally, but eventually learn to communicate. These students tell of immense frustration over the lack of stimulation that occurred for them and their utter boredom. Ensuring this does not happen for other students is a moral and ethical imperative for educators and education agencies.

### **Sample**

A preliminary search was done using a variety of Boolean operators to determine which terms generated the greatest number of cases. A population check was done to see if there was overlap among the terms used. This is important because cases where different terminology was

used needed to be included. To generate this population, I used terms that identify environments, settings, or placements. These terms were placement, *LRE*, *inclusion*, *mainstreaming*, *continuum of placements*, and *reverse mainstreaming*. Terms that identified students with SDs included *ID*, *MD*, *autism*, *SD*, *medically fragile*, *severely impaired*, *severe disabilities*, *tracheal sectioning*, and *nasal and gastrostomy*. The first three terms are *ID*, *MD* and *autism*. These three terms are identified in the IDEIA. I combined these three terms with all the terms I could think of that would identify placements or environments these students could be in. Combining setting and disability terms identified cases that addressed issues for students with SD and their setting. I used the time parameter of five years to generate the number of cases identified with each set of Boolean operators in Table 3. I was also interested to see if terminology identified in practice would generate additional or more diverse cases. The other terms (*SD*, *medically fragile*, *severely impaired*, *severe disabilities*, *nasal and gastrointestinal*, and *tracheal*) are not included in the law but are terms used in practice to identify disabilities of these students. These Boolean operators failed to identify additional cases. DPHs and those giving testimony used legal terminology to testify of and write about students with SD.

My time-bounded population was generated using Boolean operators identified in Table 3. The three Boolean search terms I used were *MD and placement*, which yielded 333 cases; *ID and placement*, which yielded 73 cases; and *autism and ID and placement*, which yielded 101 cases. The total number of cases initially screened was 507. The time parameter began May 1, 2013 and concluded on May 10, 2015. The population was narrowed further by including only cases where student's exhibited an ID.

My NVivo analysis was thorough and diverse. I had multiple options, including 16 other parental concerns identified in my nodes. I could also have looked at private placements that

were either contracted by school districts or were unilateral placements (placements made by parents without consulting their education agency). However, the depth of my analysis necessitated a singular focus, and the least restrictive environment was still at the heart of my research question.

### **Data Analysis**

Data were analyzed from these cases using the qualitative data analysis software program NVivo to find nodes. Open or pattern coding was done initially to determine what settings were being contested and how they were identified. Some nodes coded to included demographic data, such as age, gender, and disability type. Nodes about settings, which were the source of conflict, included the contested setting (the setting the parents were unhappy with) and the requested setting (the setting parents wanted their child to be in).

Given this information, I decided to look at a two-year period and use the Boolean search terms of placement for the setting, and the three disability types identified by law of ID, MD, and autism with an ID. These searches generated a pool of 507 cases. I did a preliminary analysis of these cases to parse out those that really did talk about placement and included students with SD. To pare down those 507 cases, it was necessary to either read each summary or, if there was no summary, to read through the cases and pay specific attention to the demographic data, which usually contained the disability, intellectual ability, and at times the placement. Often the identification of the placement was not located near the demographic data. In those instances, it required a more intense search of the case to find what the placement was. Cases where students were identified with MDs may not have had an ID as one of their deficits. It was necessary to comb each case to find a list of the disabilities included as part of that classification. Some cases caught in the search may have been about students with SD but were not about the setting or

environment. As I searched each of the 507 cases and found them appropriate, I imported them into the qualitative data analysis program NVivo. When I completed this initial analysis, I had imported 107 cases.

I began doing a qualitative data analysis with these cases. This intensive analysis included a comprehensive screening of whether each case was about students with the disability types I was interested in. At times the intellectual impact was not intense enough, or student environments were not really about their placement. While doing this in-depth analysis I had to discard another 25 cases that failed to meet the criteria for this study. My final count of appropriate hearings is 82 core cases.

As we identified which circuits and states were represented, we noticed that Florida, a state with a relatively large population and a higher rate of litigation, was not represented. In order to ensure I wasn't missing important cases, I did a more exhaustive search to find cases from Florida for the time period identified. That search generated 116 cases. I did an analysis of each of those hearings to ensure I hadn't excluded representative cases. This was an important audit check to ensure an accurate representation of cases with these criteria. I didn't find any additional cases that fit the criteria in this search from Florida.

Similarly, I looked at the Eighth circuit to ensure I hadn't missed cases representative of my study. I found no additional cases that fit my criteria. Even though the Eighth circuit is not represented, included cases provide a snapshot of placements for students with SD. For the purposes of this analysis, I did not feel there needed to be a representative population from all states in proportion to their size because placements for students is a systemic problem and is federally regulated. No matter where the cases are from, they represent problems identified with the special education system. Since all circuits in the United States except the Eighth circuit were

represented, I did another search to determine if the Eighth circuit published cases to this database. The circuit does, but none of their cases for this time period fit the criteria of the data analysis.

Sixteen states are represented in the data set. Washington, DC, and the states of New York and California each have thirteen or more cases. Pennsylvania has eight cases. The other 12 states had four or fewer cases represented. Five states had only one case in the data set. (See Table 4.)

Because I am interested in whether the student's current setting was a structured environment (English language arts, math, science, or social science), semi-structured (career technical education classes, fine or practical arts, or physical education), or unstructured, I coded to these nodes. It was interesting to note whether the requested setting was more or less restrictive. Other nodes emerged during the coding process. Data analysis was refined through axial coding. Coding to nodes that were on the current "continuum of placements" helped determine whether the continuum of placements model was being interpreted in a linear way.

Ways to determine if parents/guardians, IHOs, or educators were interpreting placements in a linear way included where the student was currently being served, which settings were being asked for, and what environments were ruled appropriate. In this analysis the class(es) students were currently served in for a majority of the cases were indicated by terms such as self-contained, severely disabled, special class, or special school. Individualization was evident when students were being served in settings with their typically achieving peers. Terminology indicating individualization included the term *GE* as well as any class, by name that typically achieving peers would take. I also looked for terminology such as *out-classes*, *lunch*, *recess*, *passing periods*, or *specialty classes*. In 58 of the cases (a majority), parents/guardians did not



seek placements where typically achieving students were educated, nor did IHOs rule to have students included in such settings. This was surprising to me because when students with SD leave public school settings, they will be rubbing shoulders on a daily basis with people who are very diverse but more typical.

These cases were decided by IHOs. As IHOs listened to testimony of student advocates, parents/guardians, and school personnel, they were determining whether the witnesses were “credible.” Credibility was established by the education level of the witness, how well the witness knew the student, and the demeanor of the witness. If a witness was very educated but only able to speak in generalities because they had not observed the student, that witness was not usually given great credibility. If a witness seemed defensive or on guard, that witness was also discredited. The witnesses most persuasive to IHOs were those who knew the student and had worked with or observed them in their school environment and/or at home. Witnesses who also appeared confident and at ease testifying about the student were attended to. Parents were accorded careful consideration. Even when IHOs did not rule in favor of parents, in most cases, IHOs would make a statement indicating they could tell how much the parents cared about their child and wanted what was best for them.

### **Limitations**

Limitations of this research include the fact that the database may not include all DPHs completed in the United States. It may also over-represent the states or circuits that have many DPHs and underrepresent states or circuits where there are few DPHs. A count was made (see Table 4) of the cases identified to achieve transparency for the research and to help determine which states or circuits are overrepresented, underrepresented, or not represented at all.

Whether a student with an IEP has measurable goals or not is not always, or even usually, the dispositive issue in DPHs. Because this is so, it is possible that goals were identified in more of the 82 cases but the information on goals was not deemed critical enough to warrant space in the written decision. This limitation may have occurred because of the nature of the database.

Because the focus of this analysis is on the interplay between parent requests and the rulings generated for LRE, a representative sample covering all geographic areas and all circuits was not sought. The difficulties associated with LRE are a systemic problem. Thick description throughout data analysis provides detail needed to help consumers determine where their current placements fall and allow them to determine if their placements may prove to be problematic.

IHOs have only the information that is brought to the hearing. They have what the school indicates is necessary for a student to be successful and what parents or their advocates indicate is appropriate for the student. In order to make a ruling, the information has to be presented by one party or the other. The individualization identified in this research was limited by the thinking of the parties involved in the hearings.

## APPENDIX C: Dissertation References

- Agran, M. (2011). Promoting literacy instruction for people with severe disabilities: Achieving and realizing a literate identity. *Research & Practice for Persons with Severe Disabilities*, 36, 89–91.
- Agran, M., Wehmeyer, M., Cavin, M., & Palmer, S. (2010). Promoting active engagement in the general education classroom and access to the general education curriculum for students with cognitive disabilities. *Education and Training in Autism and Developmental Disabilities*, 45, 163–174.
- Alquraini, T., & Gut, D. (2012). Critical components of successful inclusion of students with severe disabilities: Literature review. *International Journal of Special Education*, 27, 42–59.
- Ashby, C. (2010). Disability studies and inclusive teacher preparation: A socially just path for teacher education. *Research and Practice for Persons with Severe Disabilities*, 37, 89–99.
- Bennett, S. M., & Gallagher, T. L. (2013). High school students with intellectual disabilities in the school and workplace: Multiple perspectives on inclusion. *Canadian Journal of Education*, 36, 96–124.
- Beth v. Van Clay, 282 F.3d 493 (7<sup>th</sup> Cir. 2002).
- Blue-Banning, M., Summers, J. A., Frankland, H. C., Nelson, L. L., & Beegle, G. (2004). Dimensions of family and professional partnerships: Constructive guidelines for collaboration. *Exceptional Children*, 70, 167–184.
- Brown v. Board of Education, 347 U.S.C. § 483 (1954).

- Carter, E. W., & Hughes, C. (2006). Including high school students with severe disabilities in general education classes: Perspectives of general and special educators, paraprofessionals, and administrators. *Research and Practice for Persons with Severe Disabilities, 31*, 174–185.
- Carter, E. W., Sisco, L. G., Chung, Y. C., & Stanton-Chapman, T. L. (2010). Peer interactions of students with intellectual disabilities and/or autism: A map of the intervention literature. *Research and Practice for Persons with Severe Disabilities, 35*, 63–79.
- Carter, E. W., Swedeen, B., & Moss, C. K. (2012). Engaging youth with and without significant disabilities in inclusive service learning. *Teaching Exceptional Children, 44*(5), 46–54.
- Causton-Theoharis, J. N. (2009). The golden rule of providing support in inclusive classrooms: Support others as you would wish to be supported. *Teaching Exceptional Children, 42*, 36–43.
- Daniel R.R. v. State Bd. Of Educ., 874.2d 1036 (5<sup>th</sup> Cir. 1989).
- Doe v. Smith, 879 F.2d 1340 (6<sup>th</sup> Cir. 1989).
- Downey Unified Sch. Dist., 114 LRP 53221 (Calif. SEA, Dec. 3, 2014).
- Downing, J. E., & Peckham-Hardin, K. D. (2007). Inclusive education: What makes it a good education for students with moderate to severe disabilities? *Research and Practice for Persons with Severe Disabilities, 32*, 16–30.
- Doyle, M. B., & Giangreco, M. (2013). Guiding principles for including high school students with intellectual disabilities in general education classes. *American Secondary Education, 42*, 57–72.

- Dunst, D. J., & Dempsey, I. (2007). Family-professional partnerships and parenting competence, confidence, and enjoyment. *International Journal of Disability, Development and Education, 54*, 305–318.
- Dymond, S. K., Renzaglia, A., Rosenstein, A., Chun, E. J., Banks, R. A., Niswander, V., & Gilson, C. L. (2006). Using a participatory action research approach to create a universally designed inclusive high school science course: A case study. *Research and Practice for Persons with Severe Disabilities, 31*, 293–308.
- Education for All Handicapped Children Act, 20 U.S.C. §1400 (1975).
- Enu, B., Knotek, S. E., Heining-Boynton, A. L. (2008). Reconceptualizing the zone of proximal development: The importance of the third voice. *Educational Psychology Review, 20*, 133–147.
- Etscheidt, S. K., & Bartlett, L. (1999). The IDEA amendments: A four-step approach for determining supplementary aids and services. *Exceptional Children, 65*, 163–174.
- Gibbs, G. (2009). *Analyzing qualitative data*. Thousand Oaks, CA: SAGE.
- Gredler, M. E. (2012). Understanding Vygotsky for the classroom: Is it too late? *Educational Psychology Review, 24*, 113–131.
- Hughes, C., Kaplan, L., Bernstein, R., Boykin, M., Reilly, C., Brigham, N., ... Harvey, M. (2012). Increasing social interaction skills of secondary school students with autism and/or intellectual disability: A review of interventions. *Research and Practice for Persons with Severe Disabilities, 37*, 288–307.
- Hunt, P., McDonnell, J., & Crockett, M. A. (2012). Reconciling an ecological curriculum framework focusing on quality of life outcomes with the development and instruction of

- standards-based academic goals. *Research and Practice for Persons with Severe Disabilities*, 37, 139–152.
- In re: Student with a Disability, 114 LRP 53598 (Ill. SEA, Dec. 2, 2014).
- Individuals with Disabilities Education Act of 1975, Pub. L. No. 105-17.
- Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446.
- Jegatheesan, B. (2009). Cross-cultural issues in parent-professional interactions: A qualitative study of perceptions of Asian American mothers of children with developmental disabilities. *Research and Practice for Persons with Severe Disabilities*, 34, 123–136.
- Kaplan, R., Bernstein, R., Boykin, M., Reilly, C., Brigham, N., Cosgriff, J., & Heilingoetter, J. (2012). Increasing social interaction skills of secondary school students with autism, and/or intellectual disability: A review of interventions. *Research and Practice for Persons with Severe Disabilities*, 37, 288–307.
- Kayama, M. (2010). Parental experiences of children's disabilities and special education in the United States and Japan: Implications for school social work. *Social Work*, 55, 117–125.
- Los Angeles Unified Sch. Dist., 113 LRP 43692 (Calif. SEA, Oct. 16, 2013).
- Los Angeles Unified Sch. Dist., 114 LRP 53431 (Calif. SEA, Nov. 25, 2014).
- Kurth, J., Gross, G., Lovinger, S., & Catalano, T. (2012). Grading students with significant disabilities in inclusive settings: Teacher perspectives. *Journal of International Association of Special Education*, 13, 39–55.
- Lynch, H., & Allan, J. (2007). Target practice: Using the arts for social inclusion. *International Journal of Education & the Arts*, 8, 1–21.
- MacDonald, E. E., & Hastings, R. P. (2010). Mindful parenting and care involvement of fathers of children with intellectual disabilities. *Journal of Family Studies*, 19, 236–240.

- Moreland Sch. Dist., 114 LRP 5561 (Calif. SEA, Jan. 3, 2014).
- Northwest Colorado Board of Cooperative Educational Services, 114 LRP 28795 (Co. SEA, May 2, 2014).
- Parkland Sch. Dist., 113 LRP 40770 (Penn. SEA, Sept. 13, 2013).
- Philadelphia Sch. Dist., 112 LRP 41958 (Penn. SEA, July 12, 2012).
- Regional Sch. Unit # 57, 113 LRP 39386 (Maine SEA, May 21, 2013).
- Mastropieri, M. A., & Scruggs, T. E. (2001). Promoting inclusion in secondary classrooms. *Learning Disability Quarterly*, 24, 265–274.
- Murray, M. M., & Curran, E. M. (2008). Learning together with parents of children with disabilities: Bringing parent-professional partnership education to a new level. *Teacher Education and Special Education*, 31, 59–63.
- Nelson, L. G. L., Summers, A. A., & Turnbull, A. P. (2004). Boundaries in family-professional relationships. *Remedial and Special Education*, 25, 153–165.
- Oberti v. Bd. of Educ., of Clementon Sch. Dist., 995 F.2d 1204 (3rd Cir. 1993).
- Obiakor, F. E. (2011). Maximizing access, equity, and inclusion in general and special education. *The Journal of International Association of Special Education*, 12, 10–16.
- Plessy v. Ferguson, 163 U.S. C. § 537 (1896).
- Reynolds, M. C. (1962). A framework for considering some issues in special education. *Exceptional Children*, 28, 367–370.
- Rozalski, M., Stewart, A., & Miller, J. (2010). How to determine the least restrictive environment for students with disabilities. *Exceptionality*, 18, 151–163.
- Ryndak, D., Ward, T., Alper, S., Storch, J. F., & Montgomery, J. W. (2010). Long-term outcomes of services in inclusive and self-contained settings for siblings with comparable

- significant disabilities. *Education and Training in Autism and Developmental Disabilities, 45*, 38–53.
- Saunders, A. F., Spooner, F., Browder, D., Wakeman, S., & Lee, A. (2013). Teaching the common core in English language arts to students with severe disabilities. *Teaching Exceptional Children, 46*(2), 22–33.
- Smith, A. (2006). Access, participation, and progress in the general education curriculum in the least restrictive environment for students with significant cognitive disabilities. *Research and Practice for Persons with Severe Disabilities, 31*, 331–337.
- Smith, T. E. C. (2005). IDEA 2004: Another round in the reauthorization process. *Remedial and Special Education, 26*, 314–319.
- Spooner, F., Dymond, S. K., Smith, A., & Kennedy, C. H. (2006). What we know and need to know about accessing the general curriculum for students with significant cognitive disabilities. *Research and Practice for Persons with Severe Disabilities, 31*, 277–283.
- Taylor, S. J. (2004). Caught in the continuum: A critical analysis of the principle of the least restrictive environment. *Research and Practice for Persons with Severe Disabilities, 29*, 218–230.
- Timothy W. v. Rochester Sch. Dist., 875 F.2d 954 (1st Cir. 1989).
- Trela, K., & Jimenez, B. A. (2013). From different to differentiated: Using “ecological framework” to support personally relevant access to general curriculum for students with significant intellectual disabilities. *Research and Practice for Persons with Severe Disabilities, 38*, 117–119.
- Tustin Unified Sch. Dist. 115 LRP 3628 (Calif. SEA, Jan. 15, 2015).



- U.S. Department of Education. (2013). *Thirty-fifth annual report to Congress on the implementation of the Individuals with Disabilities Education Act*. Retrieved from <http://www2.ed.gov/about/reports/annual/osep/2013/parts-b-c/35th-idea-arc.pdf>
- U.S. Department of Health and Human Services, National Reading Panel. (2000). *Teaching children to read: An evidence-based assessment of the scientific research literature on reading and its implications for reading instruction* (NIH Publication No. 00-4754). Retrieved from <http://www.nichd.nih.gov/publications/pubs/nrp/documents/report.pdf>
- Vygotsky, L. S. (1978). *Mind in society: The development of higher psychological processes*. Cambridge, MA: Harvard University Press.
- Wakeman, S., Karvonen, M., & Ahumada, A. (2013). Changing instruction to increase achievement for students with moderate to severe intellectual disabilities. *Teaching Exceptional Children, 46*(2), 6–13.
- Weasmer, J., & Woods, A. M. (2010). It takes a community. *Kappa Delta Pi Record, 46*, 127–131.