

Gaskin v. PA: Implications for School Leaders

By Linda O. Rhen, Ed.D.



Background: *Gaskin v. Pennsylvania Department of Education (United States District Court, Philadelphia)* -- On December 21, 2004, counsel for the parties in the *Gaskin* case signed a provisional settlement agreement that, if approved by the court, will end more than 10 years of litigation. *Gaskin* is a class action lawsuit brought on behalf of Pennsylvania public school students with disabilities. The action asserts violations of federal statutes protecting the rights of children with disabilities, principally the Individuals with Disabilities Education Act (IDEA). The plaintiff class representatives are 12 public school students who have significant disabilities, their parents and 11 national and state organizations that advocate for the rights of persons with disabilities. The defendants are the Pennsylvania Department of Education (PDE), various PDE officials and the members of the Pennsylvania State Board of Education.

The lawsuit, originally filed in 1994, alleges that students with disabilities have been denied their federal statutory right to a free appropriate public education in regular classrooms with necessary supplementary aids and services. In particular, the plaintiffs allege that PDE has systematically failed to provide technical assistance and training, and to enforce the provisions in federal law requiring local schools and school districts to offer a full continuum of support services allowing students with disabilities to be educated in regular classrooms.

The proposed settlement agreement establishes an advisory panel, makes suggested changes in the IEP format and obliges PDE to implement new compliance monitoring and complaint resolution procedures, as well as training, technical assistance and mini-grants to schools. The settlement agreement will be in effect for five years from the date approved by the court. A final order is expected from Judge Robreno later this year.



About the Author:
Dr. Linda O. Rhen is presently the director of the Bureau of Special Education in the Pennsylvania Department of Education (PDE). From July 1998 until November of last year, she was executive director of Lancaster Lebanon Intermediate Unit 13. Previously, she held the positions of director of instructional services and director of exceptional children services at the intermediate unit. She was formerly chief, Division of Technical Assistance, Bureau of Special Education, PDE. She began her career as a speech therapist.

The Gaskin settlement clarifies PDE's role in ensuring consistent implementation of the principle of Least Restrictive Environment (LRE), a basic tenet of the Individuals with Disabilities Education Act (IDEA). Since the passage of P.L. 94-142, the Education of All Handicapped Children Act (EHA), which preceded IDEA in 1975, all states have been required to establish procedures to ensure:

*...that to the **maximum extent appropriate**, handicapped children....are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature and severity of the handicap is such that **education in regular classes with the use of supplementary aids and services** cannot be achieved satisfactorily [emphasis added].*

Interpretation of this language, known as the Least Restrictive Environment (LRE) requirement, has been the focus of much professional debate and research. In the legal arena, disagreements about placement practices and decisions have been the catalyst for numerous due process hearings and court cases around the country.

At the federal level, the U.S. Department of Education monitors states' implementation of LRE requirements and collects data used to compile a ranking of the states. According to the federal LRE ranking of states based on data that Pennsylvania has reported, the Commonwealth has been in the lowest third of states and territories. Under IDEA 2004, states will be required to conduct specific and focused monitoring of local school district implementation of LRE.

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Under the proposed settlement agreement, PDE is charged with ensuring that all public schools have the capacity to proactively consider the full range of supplementary aids and services that may be provided in general education classrooms to support students with disabilities.

The proposed settlement agreement includes professional development, policy, monitoring and compliance activities that will occur over a five-year period. PDE's activities will continue to adhere to the IDEA and the *Oberti* standard. The presumption of the *Oberti* standard is that IEP teams *begin* placement discussions with a consideration of the general education classroom and the supplementary aids and services that are needed to enable a student with a disability to benefit from educational services.

Oberti Legal Standard

The preference or presumption in favor of inclusion will not be rebutted unless the school district shows that:

- the child's disabilities are so severe that he or she will receive little or no benefit from inclusion;
- he or she is so disruptive as to significantly impair the education of other children in the class; or
- the cost of providing an inclusive education will significantly affect other children in the district.

Oberti v. Clementon S.D., 1992

Implications for Educators, Students and Families

The recently amended Individuals with Disabilities Education Act incorporates the following Congressional finding:

Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by having high expect-

Table 1: Implications for Building Leaders

Components of the proposed settlement agreement that have a direct impact on principals are highlighted below.

Requirements of Settlement Agreement	Implication for School Leaders
<p><u>Welcoming all Students:</u></p> <ul style="list-style-type: none"> • PDE will distribute to school districts materials for display in buildings that make it clear that all children, including those with disabilities, are welcome. 	<ul style="list-style-type: none"> • Use these materials in school-wide efforts to create a supportive school climate for all students.
<p><u>Needs Assessment:</u></p> <ul style="list-style-type: none"> • The needs of school district personnel relative to research-based practices and use of supplementary aids and services in regular education classes will be assessed. 	<ul style="list-style-type: none"> • Use the Needs Assessment tool to identify relevant information for school improvement and professional development plans.
<p><u>IEP Practices/Placement Decisions:</u></p> <ul style="list-style-type: none"> • IEP teams apply the <i>Oberti</i> standard to placement decisions. • IEP teams determine whether the goals in the student's IEP can be implemented in regular education classrooms, considering the full range of supplementary aids and services, before considering removal from the regular education classroom environment. • PDE will modify and promulgate the LRE portion of the IEP form. Training will be provided on its use. • Schools may be asked by PDE to provide sample IEPs for review by the <i>Gaskin</i> Advisory Panel. 	<ul style="list-style-type: none"> • Ensure that placement decisions are based on individual student strengths and needs, and that IEP teams consider the regular classroom with supplementary aids and services before removal to a more restrictive environment. • Provide opportunities for teachers to participate in professional development and to become aware of peer-reviewed and research-based practices that can be used to support students in regular classroom settings. • Ensure that staff are aware of changes and use the new form. • Respond to requests and remove student-identification information from document.
<p><u>Exemplary Programs:</u></p> <ul style="list-style-type: none"> • Districts that have implemented exemplary LRE practices will be identified. 	<ul style="list-style-type: none"> • Programs will be recognized for their efforts and districts asked to assist in dissemination and replication of program and materials.
<p><u>Professional Development:</u></p> <ul style="list-style-type: none"> • PDE will provide on-site training, technical assistance and professional development to school districts to build capacity to support students with disabilities in general education classrooms. 	<ul style="list-style-type: none"> • Access professional development resources available via your local intermediate unit, higher education partners and PaTTAN. Insist that professional development and supports to your school be delivered using effective practices (e.g., sustained support, on-site modeling and consultation, whole-school professional development focus). <p style="text-align: right;"><i>(Chart - Continued on next page)</i></p>

Chart - continued below

Requirements of Settlement Agreement	Implication for School Leaders
<ul style="list-style-type: none"> • PDE will provide supports to develop and deliver customized, sustained technical assistance plans in response to identified needs in individual school districts. • PDE will support joint training of school district staff and families in the use of supplementary aids and services in general education classrooms. • Mini-grants will be available from PDE to fund school initiatives focused on improvement in LRE practices. 	<ul style="list-style-type: none"> • Align and integrate this support within the larger plan for professional development and school improvement, including research-based reading instruction, progress monitoring and differentiated instruction. • Build partnerships with families of students with disabilities and actively involve them in program planning efforts. • Access support from IU consultants as needed to prepare and submit applications.
<p><u>LRE Index and Monitoring:</u></p> <ul style="list-style-type: none"> • PDE will review data reported by school districts and charter schools to determine the LRE Index. The <i>Gaskin</i> Advisory Panel will provide input into this determination. • District LRE scores will be made public as part of school and district report cards under NCLB and IDEA. • PDE will notify the 250 districts in the lower half of the LRE Index of their status with regard to the Index and describe resources available to assist the district in addressing areas in need of improvement. • PDE will review data and information for all districts in the lowest 10% of all school districts (50 districts) and communicate with the districts regarding factors indicating a need for LRE improvement and recommended training, technical assistance and/or other activities. District may be expected to attend training, participate in technical assistance and develop an action plan to address areas of need. • PDE will conduct specific focused LRE monitoring for the 20 school districts with the lowest index score. If warranted, a corrective action plan will be designed to address procedures and practices that are impacting implementation of LRE. 	<ul style="list-style-type: none"> • Become familiar with data reports regarding special education students in the school and district. • Access training and ensure that IEP teams use PDE guidance for calculating LRE percentages on individual IEPs -- this data is reported in the PennData system. Be prepared to explain the purpose and calculation of LRE Index scores to the school and community. • Review your data reports; identify areas of improvement and implement professional development activities to address areas of need, such as: differentiated instruction, accommodations and adaptations. • If your district receives this communication, you should work with other district staff to review your special education service delivery model. Guiding questions include: Are IEP teams knowledgeable of the full range of supplementary aids and services to support students in general education settings? Are a full range of services available? Are decisions being made on an individual basis considering the individual needs of the student? Has the IEP team considered providing services in the neighborhood school? • Participate in analysis of district data, preparation activities and monitoring visit. Develop and implement a corrective action plan to address areas of need, e.g., developing or expanding inclusive options within the district or revising professional development plans to address outcomes related to inclusive practices, etc.

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tations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to -

- (i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and
- (ii) be prepared to lead productive and independent adult lives, to the maximum extent possible ([Sec. 682(c)(5)]).

What is now known about effectively teaching and supporting all students, including those with disabilities, in regular classrooms, is very different in 2005 than it was in 1975. While the ambiguity associated with phrases such as “the maximum extent possible” will always pose challenges, it also obliges us to remain current, ensuring that practices in the school change as the professional knowledge base grows. This means that placement options for students will increase, rather than decrease, and that IEP teams will be empowered to make individualized and better informed decisions.

The proposed settlement agreement has a goal of ensuring that IEP teams consider the regular classroom with supplementary aids and services before removal. It

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The teacher then adds the process of focused assessments that should occur continuously in the classroom. These assessments provide data from immediate modifications to instruction and also provide a basis of evidence that can be shared at the Monthly Meeting Level. At this most specific level, data is used continuously to provide information for instructional decision-making within each classroom and for each student, both those students who are proficient and those who are not proficient. The progress and growth of all students is a focus for this ongoing work.

To maximize effectiveness, the blueprint requires that all three levels of planning occur within the assessment system. As indicated by the arrows, each level informs the next level and refines the implications of the data until it can be used to make instructional modifications for the individual student. The foundation of the data-informed culture is the classroom teacher who uses data collection, analysis and interpretation on a routine basis in his/her classroom. This form of assessment informs instruction on an immediate basis and should be compiled into a summary of instructional plans to be reported at the monthly grade or course meetings. Shared discussion will motivate decisions that will be taken by each teacher back to the classroom. The detail from the monthly meetings will also be shared at the annual meeting as valuable on-site data for consideration of the building-

wide status. Each level accepts data from its neighbors and also provides focuses, decisions and directions to all of the levels.

Conclusion

Research has shown that high-performing schools have clear academic goals for students that are based on standards, developed from data, and used to guide instructional practices. The data-informed culture necessary to achieve high performance is founded on the premise that collaborative teams of education professionals can come together to inspect data that is gathered systematically and frequently. This data is then used to make instructional decisions based on the learning gains demonstrated by the students. This combination of frequent measures of specific learning goals and teacher collaboration at all levels in schools is a blueprint to reflect on, analyze, and adjust instructional practices based on learning data. By encouraging the development of a data-informed culture, in conjunction with other educational best practices, school districts can move more effectively and efficiently toward the desired goals outlined by No Child Left Behind.

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does not usurp the role of the IEP team in making individualized placement decisions tailored to the needs of specific students. For instance, the IEP team for a deaf student may decide that the least restrictive environment and appropriate placement for that student is a "school for the deaf" or an IEP team for a student with autism may decide that an autistic support classroom where specific behavioral interventions may be provided is the least restrictive environment and is necessary to implement the IEP.

The research that has focused on inclusive schooling practices for the last 30 years is rich and dynamic. We are no longer asking simple questions like "what is your attitude about this?" Rather, the literature has clearly shifted to issues of practice (e.g., "what strategies are most effective under what circumstances?" or "how do we increase the use of effective methods of supporting students?"). Lydia Gaskin, her family and other advocates have challenged educators through Pennsylvania to address those issues in their daily practices.

PDE welcomes the challenges and opportunities of expanding educational options for all students with disabilities and forming partnerships with instructional leaders.

More detailed information about the case and the entire settlement agreement is available at <http://www.pattan.k12.pa.us/regsforms/CourtOrdersGaskin.aspx>.

Author's Note: Also contributing to the article were: Dr. Gail McGregor, University of Montana; Jeannine Brinkley; and Deb Hagy of the Inclusive Practices Project, Pennsylvania Training and Technical Assistance Network.