

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LYDIA REBECCA GASKIN *et al.*,

Plaintiffs,

v.

COMMONWEALTH OF PENNSYLVANIA,
PENNSYLVANIA DEPARTMENT OF
EDUCATION, *et al.*,

Defendants.

No. 94-CV-4048
(JUDGE ROBRENO)

SETTLEMENT AGREEMENT AND GENERAL RELEASE

I. INTRODUCTION

(A) This Settlement Agreement is entered into for the purpose of finally and completely resolving *Gaskin v. Pennsylvania Department of Education*, No. 94-CV-4048 (E.D. Pa.), a civil action filed by the plaintiffs on June 30, 1994, against the Pennsylvania Department of Education, various of its officers, and members of the State Board of Education. *Gaskin* was certified as a class action lawsuit pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

(B) The Settlement Agreement is entered into by and between the following parties:

- (1) Plaintiffs Lydia Rebecca Gaskin; Anne Corr; John Forte; Brett Michael Koneski; Samuel Luckenbill; Lisa McCann; Sarah Noe; the estate of Merrin Rainey; Elizabeth Moser Royer; Hassan Sabree; Michael Wintering; and Tiffany Zimenoff (hereinafter referred to, collectively, as “the individual plaintiffs”);

- (2) Plaintiffs The Arc, Pennsylvania; Autism Support and Advocacy in Pennsylvania; Disabled in Action; the Learning Disabilities Association of Pennsylvania; Parents' Union for Public Schools; Pennsylvania Protection & Advocacy Association; and Pennsylvania TASH (hereinafter referred to, collectively, as "the organizational plaintiffs"); and
- (3) Defendants Commonwealth of Pennsylvania; Pennsylvania Department of Education; the Secretary of Education; the Commissioner of Basic Education; the Director of the Bureau of Special Education; and the members of the State Board of Education.

(C) The individual plaintiffs are representatives of a certified class consisting of all school-age students with disabilities in Pennsylvania who have been denied a free appropriate education in regular education classrooms with individualized supportive services, or have been placed in regular education classrooms without the supportive services, individualized instruction, and accommodations they need to succeed in the regular education classroom.

(D) All of the plaintiffs, seeking system relief, allege in the complaint, among other things, that the defendants failed to assure that members of the class are educated with students who do not have disabilities to the maximum extent appropriate and that those included in the regular education classroom are not provided with the supplementary aids and services needed to benefit from participation in the regular education classroom. The defendants deny the allegations in the complaint. Both the plaintiffs and the defendants conducted extensive discovery and filed dispositive motions.

(E) In lieu of litigating this case to its conclusion, the parties, by entering into this Settlement Agreement, agree to the following terms and conditions fully and comprehensively to settle and resolve all outstanding claims asserted in or relating to the *Gaskin* lawsuit.

II. DEFINITIONS OF TERMS USED IN THIS SETTLEMENT AGREEMENT

(Preamble) As used in this Settlement Agreement, the following terms shall have the meanings indicated. (Defined terms are indicated throughout by the use of bold-faced text.)

(A) “**Settlement Agreement**” shall mean this Settlement Agreement entered into in *Gaskin v. Pennsylvania Department of Education*, No. 94-CV-4048 (E.D. Pa.).

(B) “**Effective date of the Settlement Agreement**” shall mean the date on which the Court formally enters an order dismissing and ending the *Gaskin* case.

(C) “**Life of the Settlement Agreement**” shall mean the five-year period of time commencing on the **effective date of the Settlement Agreement** and ending exactly five years later as described in Section IV.10(B) of the **Settlement Agreement**.

(D) “**IDEA**” shall mean the Individuals with Disabilities Education Act, as amended, 20 U.S.C. § 1400 *et seq.*

(E) “**USDOE**” shall mean the United States Department of Education.

(F) “**PDE**” shall mean the Pennsylvania Department of Education.

(G) “**Bureau**” shall mean **PDE**’s Bureau of Special Education.

(H) “**Bureau Director**” shall mean the Director of the **Bureau**.

(I) “**LRE**,” “**FAPE**,” and “**IEP**” are abbreviations borrowed from **IDEA**.

- (1) “**LRE**” stands for “least restrictive environment.” **LRE** is statutorily defined as follows: “To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular education classes with the use of supplementary aids and services cannot be achieved satisfactorily.” *See* 34 C.F.R. §300.550.
- (2) “**FAPE**” stands for “free appropriate public education.” **FAPE** is statutorily defined in part as “special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under” section 614(d) of the **IDEA**. *See* 34 C.F.R. §300.13.
- (3) “**IEP**” stands for “individualized education program” or “individualized education plan.” **IEP** is statutorily defined as “a written statement for each child with a disability that is developed, reviewed, and revised in accordance with [20 U.S.C. §] 1414(d).” *See* 20 U.S.C. § 1401(11); 34 C.F.R. §§ 300.340-300.350.

(J) “**Advisory Panel**” shall mean the “Bureau Director’s Advisory Panel on Least Restrictive Environment Practices” established in accordance with Section IV.2 of the **Settlement Agreement**.

(K) “**Chapter 14**” and “**Chapter 15**” refer, respectively, to Chapters 14 and 15 in the State Board of Education’s codified regulations (Volume 22 of the Pennsylvania Code).

(L) “**CAP**” shall mean a corrective action plan ordered by **PDE** as the consequence of deficiencies identified during compliance monitoring conducted under Section IV.4 of the **Settlement Agreement**.

(M) “**Organizational plaintiffs**” shall mean the organizational plaintiffs identified in Section I(B)(2) of the **Settlement Agreement**.

III. RECITALS

(A) As an integral part of the **Settlement Agreement**, all parties affirm, as mutual goals and as principles for interpreting the provisions in the **Settlement Agreement**, the following understandings.

- (1) The **IDEA** and related case law, including *Oberti v. Board of Education*, 995 F.2d 1204 (3d Cir. 1993), require special education students to be educated with students who do not have disabilities to the maximum extent appropriate.
- (2) It is desirable that school districts increase their capacity to provide appropriate specially designed instruction, related services, supplementary aids and services and support to special education students placed in regular education classrooms.

- (3) When the law requires that special education students receive supplementary aids and services in order to be educated with students who do not have disabilities to the maximum extent appropriate, such supplementary aids and services should be:
 - (a) available to all students in need of them;
 - (b) designed to provide meaningful educational benefits; and
 - (c) provided in a manner sensitive to the need to avoid stigmatizing special education students who receive them.
- (4) Pennsylvania school districts educate all children and welcome children with special needs.

IV. SETTLEMENT TERMS, CONDITIONS, AND UNDERTAKINGS

(Preamble) The parties to the **Settlement Agreement** hereby agree to the following terms, conditions, and undertakings in full and final settlement of all claims as between them.

IV.1. Policy Development and Implementation

(A) **PDE** will require school districts to adhere to the requirements of the **IDEA** and case law, including *Oberti v. Board of Education*, 995 F.2d 1204 (3d Cir. 1993), when making placement decisions, including the following:

- (1) Students may not be removed from regular education classrooms merely because of the severity of their disabilities.
- (2) When students with disabilities, including students with significant cognitive disabilities, need specially designed instruction or other supplementary aids and

services to benefit from participating in regular education classrooms, school districts have an obligation to ensure that those services are provided.

- (3) Students' **IEP** teams must determine whether the goals in the student's **IEP** can be implemented in regular education classrooms with supplementary aids and services before considering removal from the regular education classroom environment.
- (4) School districts will consider the full range of supplementary aids and services in regular education classrooms, based on peer-reviewed research to the extent practicable, including modification of curriculum content, before contemplating removal.

(B) Where services from other Commonwealth or private agencies are required in order to provide a free, appropriate public education in the least restrictive environment, the services will be provided, coordinated, and paid in accordance with the interagency coordination *Memorandum of Understanding* entered into among **PDE**, the Pennsylvania Department of Public Welfare, the Pennsylvania Department of Labor and Industry, and the Pennsylvania Department of Health.

(C) Special education students who are entitled to gifted support or **Chapter 15** accommodations will have a single individualized education plan ("single plan") incorporating all specially designed instruction, accommodations or other support identified by the **IEP** team. The **Advisory Panel** may review **PDE** policy and make recommendations to the **Bureau Director** for changes that clarify **PDE** policy related to the use of a single plan.

(D) **PDE**, with input from the **Advisory Panel**, will design and make available to parents of children with significant disabilities information about supplementary aids and services that children with disabilities can receive in regular education classrooms and information about how to seek assistance in obtaining such supplementary aids and services. The information will be supplied to parents via mechanisms such as distribution by school districts, PennLink, or the **PDE** website.

(E) **PDE**, with input from the **Advisory Panel**, will design and distribute to school districts materials for display in school buildings that make it clear that all children, including those with disabilities, are welcome.

IV.2. Advisory Panel

(A) **PDE** will establish the “Bureau Director’s Advisory Panel on Least Restrictive Environment Practices” (the **Advisory Panel**), a special advisory group to the **Bureau Director**. The purpose of the **Advisory Panel** will be to review system-wide progress in the delivery of individualized specially designed instruction in regular education classrooms to students with disabilities in Pennsylvania, to analyze and report periodically on the status of implementation of this agreement, and to advise **PDE** on implementation.

(B) The **Advisory Panel** will consist of fifteen members, at least nine of whom will be parents of children with disabilities who are not employed by **PDE** or by any school district or other local educational agency in Pennsylvania. During the **life of the Settlement Agreement**, the members will be selected annually as follows:

- (1) Twelve members will be selected by the **organizational plaintiffs**, as provided in Section IV.2(B)(5) of the **Settlement Agreement**.

- (2) Three members will be selected by the **Bureau Director**.
- (3) All members will serve for terms of one year, and will be eligible for reappointment to additional terms up to a maximum of five terms in succession.
- (4) The membership of the **Advisory Panel** will be representative of the population of children served in special education in Pennsylvania with respect to race, ethnicity, cultural characteristics, geography, and age.
- (5) The **organizational plaintiffs** will be responsible jointly for selecting twelve members of the **Advisory Panel**. These members will include persons with recognized expertise in research and practices related to the provision of a free appropriate public education to children with disabilities in the least restrictive environment. The names of the **organizational plaintiffs'** initial representatives will be forwarded to the **Bureau Director** by no later than the sixtieth day following the **effective date of the Settlement Agreement**, and by no later than March 31 of succeeding calendar years during the **life of the Settlement Agreement**.
- (6) In the event of a vacancy, the party or parties who selected the member will designate a replacement.

(C) **Advisory Panel** members will receive reimbursement at Commonwealth rates for their travel costs to participate in the work of the **Advisory Panel**.

(D) The initial meeting of the **Advisory Panel** will be held no later than ninety days following receipt by **PDE** of the names of the **organizational plaintiffs'** twelve initial nominees.

(E) The **Advisory Panel** will meet quarterly to review and evaluate all relevant data on

system-wide progress in implementation of all components of the **Settlement Agreement** and to make recommendations for continued progress.

(F) The **Advisory Panel** will develop a committee structure to facilitate the effective performance of its work.

(G) The **Advisory Panel** will select from among its members a Chair and a Vice Chair. The **Advisory Panel** will develop its own operating rules and procedures (which will be consistent with state law and **PDE** policies applicable to the deliberations of advisory panels), designate the committees it considers necessary to its effective operation, and appoint **Advisory Panel** members to committees.

(H) **PDE** will make data available to assist the **Advisory Panel** in assessing the efforts of school districts and other programs in assuring a free appropriate public education in the least restrictive environment for schoolchildren with disabilities. The **Advisory Panel** will review samples of student **IEPs** to determine whether school district staff understand and are following the policies on compliance monitoring set forth in Section IV.4 of the **Settlement Agreement**.

(I) Data made available to the **Advisory Panel** will include the number of special education students in each school district who begin first grade outside the regular education classroom in their neighborhood schools.

(J) Data provided to the **Advisory Panel** will be in a form that complies with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (1996); the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; **IDEA**; and other applicable federal and state privacy laws.

(K) The **Bureau** will provide a reasonable level of support, including staff support, to

the **Advisory Panel** consistent with **PDE**'s budgetary resources and as determined by the **Bureau Director**.

(L) The **Advisory Panel** will assist in the design of an assessment of the needs of school district and intermediate unit personnel in research-based practices and the provision of supplementary aids and services in regular education classes. The needs assessment will evaluate actual practice in districts against standards for good practice in the field.

(M) The **Advisory Panel** will assist the **Bureau Director** in identifying school districts in Pennsylvania that have developed exemplary programs and practices in the area of education in the least restrictive environment, recognize these districts through awards, and assist them in developing materials for dissemination that will assist other districts in replication of their work.

IV. 3. IEP Format

(A) **PDE** will continue to provide an Annotated **IEP** Format to guide school districts in developing **IEPs**.

(B) By no later than December 31, 2005, **PDE** will modify the **LRE** portion of the Annotated **IEP** Format as agreed to by the parties. A copy of the modified text is attached to the **Settlement Agreement** and incorporated herein by reference as Exhibit A. The same modification will be incorporated into the **IEP** Format at the same time.

(C) For a period of three years commencing on **the effective date of the Settlement Agreement**, **PDE** will not make other modifications to the **LRE** portion of the Annotated **IEP** Format or **IEP** except with the consent of the plaintiffs; except that, should modification be required by changes in applicable federal statutory or case law or by the **USDOE**, **PDE** will be entitled to make appropriate modification following notification to the plaintiffs' counsel. By no

later than the sixtieth day following **the effective date of the Settlement Agreement**, PDE will notify school districts that it is likely that the current **IEP** Format will have to be modified to address changes in the law due to the reauthorization and amendment of the **IDEA** in late 2004.

(D) The **Advisory Panel** may suggest other modifications to the **LRE** portion of the **IEP** format for consideration and approval of the **Bureau Director**.

(E) By no later than the sixtieth day following the **effective date of the Settlement Agreement**, PDE will provide written guidance to all school districts related to completing the **LRE** portion of the **IEP**. The guidance will explain the phrases “LRE percentages” and “time in a special education class” and explain how to calculate the “LRE percentages” and “time in a special education class.” A copy of the guidance is attached to the **Settlement Agreement** and incorporated herein by reference as Exhibit B.

IV.4. Compliance Monitoring

(A) “Compliance monitoring” refers to a range of activities undertaken by **PDE** to assure that local educational agencies are complying with the requirements of the **IDEA** and other federal and state laws protecting the rights of schoolchildren with disabilities. Compliance monitoring will include three forms:

- (1) “Regular cyclical monitoring” is required by the **USDOE** and is performed in accordance with a time frame negotiated with the **USDOE** so as to encompass all local educational agencies in Pennsylvania over an agreed-upon period of time. Commencing no later than January 1, 2006, regular cyclical monitoring will include the additional steps described in Section IV.4(H)(4) of the **Settlement Agreement**.

- (2) “Targeted monitoring” is performed by **Bureau** personnel in response to specific deficiencies or shortcomings identified through the regular cyclical monitoring process because of complaints from family members or advocacy organizations or through other means.
- (3) “LRE monitoring” is new. LRE monitoring focuses on half of Pennsylvania’s 501 school districts every year, and will be conducted at various levels of intensity depending on a particular district’s relative place on a list developed by reference to an LRE index. LRE monitoring, in contrast to other forms of monitoring, will, to the maximum extent feasible, be based on the following principles:
 - (a) LRE monitoring will be based on a limited number of priorities (goal statements) identified by **PDE** following input from a diverse group of stakeholders through the **Advisory Panel**. Priorities will include: (1) increasing the number of students with disabilities included in regular education classes and neighborhood schools with needed supplementary aids, services and support; and (2) developing **IEPs** capable of providing students with disabilities a meaningful benefit from education.
 - (b) LRE monitoring will be based on a limited number of indicators (objective measures of the goal) identified by **PDE** within each priority area.
 - (c) LRE monitoring will be based on comparisons to state averages identified by **PDE**. Monitoring standards will be clearly communicated to school districts.
 - (d) Triggers (levels of performance at which **PDE** will intervene and require corrective action) will be clearly communicated to school districts.

(B) *Overview.*

- (1) All categories of compliance monitoring serve the purpose of assessing the educational progress of children with disabilities, as measured by several outcomes. All categories of compliance monitoring will be conducted in accordance with the following general rules:
 - (a) Compliance monitoring will be data- and information-based and verifiable.
 - (b) To the extent practicable, **PDE** will allocate its monitoring resources so as to address areas of greatest need. **PDE** will use data-based information to make judgments about the allocation of its resources.
 - (c) As permitted by its resources, **PDE** will provide support, including focused, customized technical assistance, to school districts in need of such support.
 - (d) **PDE** will exercise its authority to levy sanctions for failure to take actions required under the terms of a **CAP**.
 - (e) Families of children with disabilities will have avenues of communication to provide information to **PDE** on a continuous basis.
- (2) **PDE**'s monitoring staff will be appropriately trained and will engage in regular professional development. Compliance monitoring will be done in accordance with a five-tier process, with initial triggers for each level of intervention as set forth below:
 - (a) *Tier One LRE Monitoring* of 20 school districts (excluding any school district implementing a Tier One **CAP**) identified via data analysis as most in need of systemic **LRE**-related changes.

- (b) *Tier Two LRE Monitoring* based on a warning designation for school districts identified in the bottom ten percent (approximately) of data analysis (excluding any school district implementing a Tier One or Tier Two **CAP**).
- (c) *Tier Three LRE Monitoring* based on an alert designation for school districts identified in the remaining bottom half (approximately) of data analysis.
- (d) *Targeted monitoring* based on referral by a **Bureau** staff member due to extenuating circumstances within the school district.
- (e) *Regular cyclical monitoring* of all Pennsylvania school districts coordinated to the district strategic plan process, currently on a six-year cycle as approved in the Pennsylvania state plan approved by the **USDOE**.

(C) *Identification of school districts via data analysis.* On an annual basis, **PDE** will review statewide data on all 501 Pennsylvania school districts to identify districts having data factors indicating a need to improve in the area of **LRE**. School districts will be identified for **LRE** improvement by assigning to each district an “LRE index score.” The LRE index score will be determined by weighting data factors as agreed to by the parties. The data will be reviewed annually and school districts will be identified annually under the following categories:

- (1) The twenty school districts at the bottom of the list will be identified for “Tier One LRE Monitoring.”
- (2) School districts in the bottom ten percent of all Pennsylvania districts but not identified for Tier One LRE Monitoring will be placed on a “warning list” and identified for “Tier Two LRE Monitoring.”
- (3) School districts in the bottom fifty percent but not identified for Tier One LRE

Monitoring or Tier Two LRE Monitoring will be placed on an “alert list” and identified for “Tier Three LRE Monitoring.”

Districts’ LRE index scores will be made public as part of school and district report cards under the No Child Left Behind Act and the **IDEA**.

(D) *Tier One LRE Monitoring.*

- (1) By no later than December 31, 2005, and by no later than December 31 of each subsequent year, school districts will be identified for Tier One LRE Monitoring on the basis of the data analysis described in Section IV.4(C) of the **Settlement Agreement**. With respect to the initial identification of school districts in calendar year 2005, however, the parties may, by mutual agreement, identify and substitute particular school districts for Tier One LRE Monitoring in lieu of districts that would otherwise be identified on the basis of the data analysis described in Section IV.4(C) of the **Settlement Agreement**.
- (2) Monitoring visits will be conducted by a team consisting of a minimum of three members, with larger teams for larger school districts as appropriate. Team members will be appointed by the **Bureau Director**. Parents and advocates will be included as team members.
- (3) The process will involve an analysis of information similar to that used in regular cyclical monitoring with the following additional elements:
 - (a) Analysis of data to determine if there is a legitimate basis for identification of the school district for Tier One LRE Monitoring;
 - (b) A determination of whether the school district is identified for Tier One LRE

Monitoring due to a refusal to comply with **IDEA**;

- (c) A determination of factors resulting in the school district's identification;
- (d) Selection of appropriate intervention(s) to remedy deficiencies;
- (e) Continued oversight by **PDE** to determine whether intervention is effective;

and

- (f) Other additions recommended by the **Advisory Panel** and approved by the

Bureau Director.

- (4) Visits will last a minimum of two days on-site, with adequate pre-visit preparation and post-visit follow-up. The process will start with facilitated self-assessment and validation of data. There will be on-site review of student files; interviews; and review of outcome data.
- (5) The team will conduct an exit conference with school district representatives. Team members will use the exit conference to discuss the elements of a **CAP** to remedy any deficiencies found to exist.
- (6) If deficiencies are found to exist, then the **Bureau** will follow up by submitting a written **CAP** no later than six weeks following the on-site visit. The school district will be required to complete the **CAP**. The **CAP** may require one, two, or more years to complete, with interim reporting and monitoring obligations. Required training will be identified to address specific areas in the **CAP**.

(E) *Tier Two LRE Monitoring—the “Warning List.”* School districts on the warning list will receive a written communication from the **Bureau**. The communication will warn the district that it is close to the point of being subject to Tier One LRE Monitoring; identify the

factors indicating a need for **LRE** improvement, including an explanation why the data indicated a need for **LRE** improvement; and state (in words to this effect), “The Department expects you to take the following steps....” Among the steps that will be delineated are the following:

- (1) Attendance at **PDE**-sponsored training and technical assistance programs;
- (2) Acceptance of technical assistance by **PDE** personnel; and
- (3) Submission by the school district of a **CAP** addressing areas identified for improvement.

(F) *Tier Three LRE Monitoring—the “Alert List.”* School districts on the alert list will receive a written communication from the **Bureau**. The communication will inform the district that it is in the bottom half of all districts in terms of the **LRE** data analysis described in Section IV.4(C) of the **Settlement Agreement**; identify areas in need of improvement; and describe resources available to the district to assist in improvement.

(G) *Targeted Monitoring.* Targeted monitoring is a selective process used by **Bureau** personnel to identify a school district based on extenuating circumstances in that particular school year. School districts subject to targeted monitoring are selected based on a referral by a **Bureau** staff member. Monitoring is confined to a discrete area identified by the staff member.

(H) *Regular Cyclical Monitoring.*

- (1) Consistent with federal law and implementing regulations, the **Bureau**’s regular cyclical monitoring will continue to be conducted as part of **PDE**’s general supervisory responsibility in accordance with its monitoring obligations to the **USDOE**. Currently, each school district in Pennsylvania is monitored once every six years to ensure that the district is in compliance with state and federal special

education laws and regulations.

- (2) Regular cyclical monitoring is aligned with existing strategic planning and special education planning at the school district level. Each district completes a strategic plan every six years to address all programs within the district. As described in Section IV.6 of the **Settlement Agreement**, regular cyclical monitoring is completed the year before the strategic plan is due so that any corrective actions or improvement strategies can be incorporated into the special education and strategic plans. Over the next two years, the strategic and special education plans will be made part of the same process and document.
- (3) Regular cyclical monitoring focuses on systemic problems within a school district using data analysis, onsite review, and procedural and performance indicators. Following a regular cyclical monitoring visit, data are compiled and a report is sent to the district detailing the results. If deficiencies are identified, the **Bureau** prepares a **CAP** and the district is obligated to correct the deficiencies. The **Bureau's** compliance division monitors and verifies the district's implementation of the **CAP** on an ongoing basis.
- (4) When a school district in Tier One LRE Monitoring or Tier Two LRE Monitoring is identified for regular cyclical monitoring, **PDE** will take the following additional steps as part of the regular cyclical monitoring process:
 - (a) **PDE** will require the district to provide and analyze data specifically related to **LRE**, including data on the percentage of students with disabilities educated in regular education classrooms for 80 percent or more of the school day,

disaggregated by disability; the percentage of students with disabilities removed from the regular education classroom for 60 percent or more of the school day; the percentage of students with disabilities educated in separate school buildings; and the percentage of students with disabilities educated outside their home district or in programs operated by another educational agency.

- (b) **PDE** will examine a representative sample of individualized education plans for the purpose of determining whether the district is satisfying its **FAPE** and **LRE** obligations under federal law.
- (c) **PDE** will examine district policies and procedures to ensure that a full array of services are available.
- (d) **PDE** will require specific staff training for district personnel, designed to target the particular **LRE** deficiencies identified in compliance monitoring, to assure that the district possesses the skills necessary to meet the needs of diverse learners, including students with significant disabilities, in the regular education classroom.

(I) *Sanctions for Noncompliance.* A school district that fails to honor the commitments and obligations contained in a **CAP** (whether the plan be to rectify deficiencies identified through **LRE** monitoring, targeted monitoring, or regular cyclical monitoring) will be subject to the following sanctions and enforcement powers:

- (1) A mandatory meeting with **PDE** in Harrisburg in which the superintendent and chair of the school board will be obligated to participate.

- (2) Appropriate sanctions as set forth in **PDE**'s "Basic Education Circular" on enforcement, including the withholding of funds from the school district and redirecting those funds to the appropriate body to support specific expenditures (*e.g.*, hiring personnel) to implement the action required.
- (3) If appropriate, the initiation of professional disciplinary action against the superintendent or others whose conduct is found to have resulted in the school district's failure to meet its obligations under the **CAP**.

IV.5. Complaint Resolution.

(Preamble) **PDE** will build upon and modify its present system of complaint investigation and resolution in the following respects:

(A) Whenever a parent or student submits a complaint to the **Bureau**, **PDE** will, without exception, investigate the complaint. If **PDE** determines that the complaint was timely filed and that it has jurisdiction to investigate the complaint (*see* 34 C.F.R. §300.662), then **PDE** will not resolve the complaint without using its best efforts (i) to interview the parent or student, and (ii), if the complainant identifies persons alleged to have actual knowledge of the facts, to interview a reasonable number of such persons.

(B) When the complaint resolution process results in a finding by **PDE** that a school district has violated an individual student's right to receive supplementary aids and services in a regular education class, or where such a violation has been established after a due process hearing, **PDE** will investigate during the district's next compliance monitoring whether the district has corrected the violation, not only for the student who was the subject of the complaint but for similarly situated students.

IV.6. Plan Approval

(Preamble) **PDE** will build upon and refine its present system of review and approval or disapproval of special education plans submitted by the 501 school districts in Pennsylvania as follows:

(A) Where results of compliance monitoring demonstrate failure to provide special education students with meaningful educational benefit or with supplementary aids and services in regular education classes and neighborhood schools to the maximum extent appropriate, **PDE** will require school districts' special education plans to include appropriate corrective action, which may include development of appropriate training and customized technical assistance plans.

(B) By no later than one year following the **effective date of the Settlement Agreement**, **PDE**'s special education planning cycle will be synchronized with the compliance monitoring cycle in at least 50 percent of Pennsylvania school districts so that planning follows monitoring and the district's special education plan addresses the findings of compliance monitoring; and by no later than two years following **the effective date of the Settlement Agreement**, **PDE**'s special education planning cycle will be synchronized with the compliance monitoring cycle in at least 90 percent of Pennsylvania districts so that planning follows monitoring and the district's special education plan addresses the findings of compliance monitoring. It is **PDE**'s goal to achieve, by no later than three years following **the effective date of the Settlement Agreement**, synchronization of the planning and monitoring cycle in 100 percent of Pennsylvania districts.

IV.7. Training

(A) In furtherance of the mutual goals described in Section III of this **Agreement**, the **Bureau** will provide on-site training, technical assistance and professional development to school districts for the purpose of building local capacity in providing individualized supplementary aids and services in regular education classrooms to students with disabilities to enable them to be educated in regular education classrooms to the maximum extent appropriate. Services provided by the **Bureau** will be based on the needs of school district and intermediate unit personnel, on research-based practices, and on the assessment referenced in Section IV.2(L) of the **Agreement**. The **Advisory Panel** will review and recommend specific content, delivery systems, and evaluation processes and will assist in developing a plan for delivering technical assistance and training to respond to the needs identified in the objective assessment referenced in Section IV.2.(L) of the **Settlement Agreement**, which the **Bureau** will implement. The following components will become part of the delivery plan for training, technical assistance and professional development:

- (1) Training school district staff to provide supplementary aids and services in regular education class to students with significant disabilities, including those with significant learning disabilities, retardation, autism, emotional disabilities, physical disabilities and multiple disabilities.
- (2) Training and technical assistance in research-based practices and specialized interventions for students with significant learning disabilities, retardation, autism, emotional disabilities, physical disabilities and multiple disabilities.

- (3) Assistance in the development and delivery of customized, sustained technical assistance plans.
- (4) Joint training of school district staff and families in the use of supplementary aids and services in regular education class for students with significant disabilities, including significant learning disabilities, retardation, autism, emotional disabilities, physical disabilities and multiple disabilities.
- (5) Assistance in developing collaborative teamwork in the provision of supplementary aids and services in regular education class to students with significant disabilities.
- (6) On-site technical assistance and consultation in response to requests from parents.
- (7) Resources on inclusive and research based practices available to families via a website along with other resource materials.
- (8) A minigrant program under which **PDE** would set aside money to make discretionary grants to fund school district initiatives that use training and technical assistance to overcome gaps in knowledge and skills identified by the assessment referred to in Section IV.2(L) of the **Agreement**. A school district would not be eligible to apply for or receive a minigrant until the district completed the assessment to identify gaps in knowledge and skills, thereby recognizing school district and parent commitment in exchange for additional resources.
- (9) Collaboration with higher education to address student teaching, induction and mentoring processes that build capacity of each school or local educational

agency and begins the development of a master teacher network to address ongoing needs for maintaining inclusion related programs.

- (10) Training in effective advocacy services for children with disabilities and their families.

IV.8. Advocacy

(A) As part of their effort to promote the goal of providing trained, informed and effective advocacy support to parents on issues relating to the provision of specially designed instruction to students with disabilities in the least restrictive environment including the laws and regulations that govern the provision of special education services in the least restrictive environment, the plaintiffs have informed **PDE** of their intention to prepare a grant proposal and seek funding for a program or programs serving that purpose. If, during the **life of the Settlement Agreement**, plaintiffs' counsel presents such a grant proposal to **PDE** for consideration in accordance with this paragraph, then **PDE** agrees to review the grant proposal. If **PDE** determines that the grant proposal is consistent with **PDE** obligations, priorities, and goals and does not jeopardize the likelihood of funding for or compete with **PDE**'s own grant proposals, then **PDE** will prepare a letter or other written communication supporting such grant proposal and will take such other reasonable steps to assist plaintiffs' counsel in obtaining such grant as plaintiffs' counsel will request. If, after review, **PDE** determines in good faith that the grant proposal is inconsistent with **PDE** obligations, priorities, and goals or would jeopardize the likelihood of funding for or compete with its own grant proposals, and that therefore it cannot support the grant proposal, then **PDE** will inform plaintiffs' counsel in writing of its determination and the reasons therefor.

IV.9. Financial Terms

(A) The defendants will pay to the plaintiffs' counsel, on behalf of the plaintiffs, the lump sum of three hundred fifty thousand dollars exactly (\$350,000) in full, final, and complete settlement of all claims by the plaintiffs for compensatory damages. It will be the sole obligation of the plaintiffs to allocate and apportion that sum among themselves as they see fit. Except for the payment of the sum indicated in the first sentence of this paragraph, no plaintiff (individual or otherwise) will be entitled to any payment or other form of damages, whether legal or equitable. No plaintiff will have any claim whatsoever against the defendants individually or collectively arising out of the manner in which the lump-sum payment described in the first sentence of this paragraph is allocated or apportioned.

(B) The defendants will pay to the plaintiffs' counsel the lump sum of one million, eight hundred twenty-five thousand dollars exactly (\$1,825,000) in full, final, and complete settlement of all claims by the plaintiffs or their attorneys for attorneys' fees and litigation costs. It will be the sole obligation of the plaintiffs and their counsel to allocate and apportion that sum between attorneys' fees and litigation costs as they see fit. No plaintiff will have any claim whatsoever against the defendants individually or collectively arising out of the manner in which the lump-sum payment described in the first sentence of this paragraph is allocated or apportioned. The amount paid under this paragraph and denominated by the plaintiffs and their counsel as attorneys' fees will be the only attorneys' fees payment the defendants will ever be required to make in connection with the *Gaskin* case, and the plaintiffs and their counsel by accepting that payment specifically and categorically waive forever their right to seek additional attorneys' fees payments by any means, including (by way of illustration only and not by way of limitation) a

fee petition to the Court or an action to recover fees already incurred or incurred in the future. The amount paid under this paragraph and denominated by the plaintiffs and their counsel as litigation costs will be the only payment for litigation costs that the defendants will ever be required to make in connection with the *Gaskin* case, and the plaintiffs and their counsel by accepting that payment specifically and categorically waive forever their right to seek additional payments for litigation costs by any means, including (by way of illustration only and not by way of limitation) an application to the Court for payment of a bill of costs or an action to recover costs now or in the future.

(C) The payments specified in Sections IV.9(A) and IV.9(B) of the **Settlement Agreement** will be due and owing to the plaintiffs and their counsel by no later than 120 days following the later of the following events: (1) the date upon which the **Settlement Agreement** is formally approved by the Court; (2) the date upon which the case is dismissed or otherwise ended by order of the Court as provided in Section IV.10 of the **Settlement Agreement**.

(D) It is expressly understood by the parties and their counsel that the payments specified in Sections IV.9(A) and IV.9(B) of the **Settlement Agreement** are the only payments to which the plaintiffs or the plaintiffs' counsel will be entitled either under the **Settlement Agreement** or from any other source. The plaintiffs and their counsel specifically release the defendants, individually and collectively, and hold the defendants harmless from and against any claim for pecuniary relief in any form except for the payments specified in Sections IV.9(A) and IV.9(B) of the **Settlement Agreement**.

(E) The payments specified in Sections IV.9(A) and IV.9(B) of the **Settlement Agreement** are intended by the parties to constitute, and will be construed by the parties to

constitute, consideration exchanged by the defendants for a full, final, and complete release of all claims that the plaintiffs asserted or could have asserted against any and all of the defendants arising out of or relating directly or indirectly to the causes of action asserted in *Gaskin v. Commonwealth of Pennsylvania*, No. 94-CV-4048 (E. D. Pa.).

IV.10. Enforcement and Other Terms

(A) All parties will jointly move the Court for approval of the **Settlement Agreement** pursuant to Fed. R. Civ. P. 23(e) and will advocate in good faith for approval of the **Settlement Agreement** by the Court. Following the approval of the **Settlement Agreement** by the Court, it is the expectation of the parties that the Court will enter an order formally dismissing *Gaskin*. As of the date of that order, the Court shall relinquish jurisdiction over the case and the parties except as provided in Section IV.10(B) of the **Settlement Agreement**.

(B) For a period commencing on the **effective date of the Settlement Agreement** and ending exactly five years later (that period to be referred to in the **Settlement Agreement** as the “**life of the Settlement Agreement**”), the Court shall retain jurisdiction for the sole purpose of enforcing the following covenants and undertakings agreed to by the parties:

- (1) In accordance with the schedule set forth in Section IV.10(B)(2) of the **Settlement Agreement**, **PDE** will send the plaintiffs’ counsel written certifications stating either (a) that **PDE** is in compliance with all obligations and undertakings to which the defendants have committed by entering into the **Settlement Agreement**, or (b), if such is the case, that **PDE** is materially not in compliance with one or more specified obligations or undertakings. If the certification states that **PDE** is materially not in compliance with the **Settlement**

Agreement in any respect, then the certification will provide specific details about each provision not materially complied with; the reason for noncompliance; **PDE**'s plan for coming into compliance; and **PDE**'s anticipated timetable for coming into compliance.

- (2) **PDE**'s certifications will be due in accordance with the following timetable:
- (a) The first certification will be due on the later of the following dates: (i) December 31, 2005, or (ii) six months following the date on which the Court formally enters an order dismissing the *Gaskin* case.
 - (b) The second certification will be due on the later of the following dates: (i) June 30, 2006, or (ii) twelve months following the date on which the Court formally enters an order dismissing the *Gaskin* case.
 - (c) The third certification will be due on the later of the following dates: (i) December 31, 2006, or (ii) eighteen months following the date on which the Court formally enters an order dismissing the *Gaskin* case.
 - (d) The fourth certification will be due on the later of the following dates: (i) June 30, 2007, or (ii) twenty-four months following the date on which the Court formally enters an order dismissing the *Gaskin* case.
 - (e) The fifth certification will be due on the later of the following dates: (i) December 31, 2007, or (ii) thirty months following the date on which the Court formally enters an order dismissing the *Gaskin* case.

- (f) The sixth certification will be due on the later of the following dates: (i) June 30, 2008, or (ii) thirty-six months following the date on which the Court formally enters an order dismissing the *Gaskin* case.
 - (g) The seventh certification will be due on the later of the following dates: (i) June 30, 2009, or (ii) forty-eight months following the date on which the Court formally enters an order dismissing the *Gaskin* case.
 - (h) The eighth and final certification will be due on the later of the following dates: (i) the date upon which the **Settlement Agreement** expires, or (ii) fifty-nine months following the date on which the Court formally enters an order dismissing the *Gaskin* case.
- (3) Following receipt of certification, plaintiffs' counsel will have thirty days to respond in writing. Should plaintiffs' counsel not respond in writing within the thirty-day period, then plaintiffs' counsel shall be estopped thereafter from seeking relief for any alleged material breach of the **Settlement Agreement** not identified as such in **PDE**'s certification. In its written response, plaintiffs' counsel will identify any material breach not identified by **PDE** in the certification. Plaintiffs' counsel's failure to identify a material breach will thereafter estop plaintiffs' counsel from seeking relief for such alleged material breach.
- (4) Should either **PDE** or plaintiffs' counsel identify a material breach in the certification or the written response to the certification, then the parties will endeavor informally to agree on a course of action to remedy the breach.

- (5) Should the parties fail to reach resolution through informal means, then plaintiffs' counsel will have the right to seek the appointment of a mediator to resolve the dispute. Plaintiffs' counsel will seek in the first instance to engage the Honorable Louis Bechtle as mediator. If Judge Bechtle is unable or unwilling to mediate, then either (a) the parties will agree on an alternative mediator, or (b) each of the two sides (plaintiffs and defendants) will submit the name of one mediator-candidate to the Court, who shall select one. The costs of mediation will be split on a fifty-percent-each basis by the parties, except that, should plaintiffs' counsel seek mediation more than twice in any twelve-month period, then for that twelve-month period the costs of the third and subsequent mediations will be borne 75 percent by plaintiffs' counsel and 25 percent by **PDE**.
- (6) If a dispute is not successfully mediated, then either party will have the right to petition the Court to hear and resolve the dispute. The Court shall not entertain such a petition unless the parties have tried and failed to resolve the dispute through mediation as provided in Section IV.10(B)(5) of the **Settlement Agreement**. The parties agree not to apply to the Court for and not to seek by any other means reimbursement of attorneys' fees or litigation costs associated with the resolution of disputes under Section IV.10(B) of the **Settlement Agreement**.

(C) During the **life of the Settlement Agreement**, the parties agree that the dispute resolution mechanism provided in Section IV.10(B) of the **Settlement Agreement** shall be the exclusive and sole mechanism available to the parties for resolving any dispute whatsoever related to the terms of the **Settlement Agreement** or the obligations of the parties thereunder.

Specifically but not by way of limitation, neither party shall file a separate action for breach of the **Settlement Agreement** nor seek through any other means not mutually acceptable to all parties to resolve disputes through the intercession of a court, arbitrator, or other third party.

(D) It is agreed and understood by the parties that the **Settlement Agreement** is not a consent decree, nor is it intended to be construed as such; nor will the Court's approval of the **Settlement Agreement** convert the **Settlement Agreement** into an enforceable court order or consent decree. The **Settlement Agreement** does not operate and shall not be construed as an adjudication on the merits of the plaintiffs' claims in *Gaskin*. The **Settlement Agreement** has no precedential value and may not be cited or relied upon by any person in any proceeding for any purpose. The **Settlement Agreement** represents the compromise of disputed claims, and nothing contained in the **Settlement Agreement** shall be construed as an admission of liability or wrongdoing by any party, any such liability or wrongdoing being hereby expressly denied.

(E) In consideration of the performance of PDE's obligations under the **Settlement Agreement**, the plaintiffs, individually and collectively, hereby remise, release, and forever discharge each of the defendants and each defendant's predecessors, successors, agents, employees, administrators, heirs, and assigns from all actions and causes of action, suits, grievances, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims and demands whatsoever in law or equity, known or unknown, foreseen or unforeseen, particularly those which were or could have been set forth in *Gaskin v. Pennsylvania Department of Education*, No. 94-CV-4048 (E.D. Pa.), or which any of the plaintiffs ever had or now has, or which that plaintiff's heirs, executors, administrators, successors, attorneys, or assigns, or any of them hereafter can, shall, or may have, for or by reason of any cause, matter, or thing whatsoever

arising out of or related to the claims brought by the plaintiffs against the defendants in the *Gaskin* case from the beginning of the world to the **effective date of the Settlement Agreement**; except that claims against a local school district in which that school district is not acting as **PDE**'s employee, assign or agent shall not be barred.

(F) The plaintiffs hereby warrant and represent that none of them has filed other charges, complaints, appeals, or other actions against any of the defendants or any **PDE** official, administrator, or staff, including but not limited to any charges filed with the **USDOE**, the Equal Employment Opportunity Commission and/or the Pennsylvania Human Relations Commission, related to the actions complained of in the *Gaskin* case; and that, if it is subsequently discovered that such charges, complaints, appeals, or other actions have in fact been filed or are pending, plaintiffs shall promptly dismiss, withdraw, or discontinue any and all such past or pending charges, complaints, appeals, or other actions.

(G) The **Settlement Agreement** contains the entire agreement between the plaintiffs and the defendants with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, attorneys, and assigns of all of them.

(H) In entering into the **Settlement Agreement**, the parties hereto represent that they have relied upon the legal advice of their attorneys; that the terms of the **Settlement Agreement** have been completely explained to them by their attorneys; and that those terms are fully understood and voluntarily accepted by them. Each party hereby represents that his, her or its attorney is authorized to execute the **Settlement Agreement** on the party's behalf and in the party's name.

(I) The **Settlement Agreement** shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

(J) When used in the **Settlement Agreement**, the term “plaintiffs’ counsel” refers to the counsel who represent the plaintiffs and plaintiff class members as of the **effective date of the Settlement Agreement**. Should new counsel replace plaintiffs’ counsel at any time subsequent to that date, it will be the plaintiffs’ obligation to notify **PDE** promptly by sending notice in accordance with Section IV.10(K) of the **Settlement Agreement**. The notice will include the name, mailing address, telephone number, and facsimile number of new counsel. Should the persons who serve currently as plaintiffs’ counsel ever be replaced by counsel who work at more than one law firm, organization, or address, then notice to one of plaintiffs’ counsel shall be deemed effective notice to all of plaintiffs’ counsel.

(K) All certifications, notices, and other written correspondence required by the **Settlement Agreement** to be sent by the plaintiffs or the plaintiffs’ counsel will be mailed by first-class mail, postage prepaid, to **PDE** at the following address:

Office of Chief Counsel
Pennsylvania Department of Education
333 Market Street, 9th Floor
Harrisburg, PA 17126-0333

The certifications required by Section IV.10(B)(1) of the **Settlement Agreement** to be sent by the defendants or the defendants’ counsel will be mailed by first-class mail, postage prepaid, to the plaintiffs’ counsel at the following address:

Judith A. Gran
Public Interest Law Center of Philadelphia
125 South 9th Street, Suite 700
Philadelphia, PA 19107

(L) The **Settlement Agreement** may be executed in one or more identical counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signed signature pages may be transmitted by facsimile, and any such signature shall have the same legal effect as an original.

(M) The **effective date of the Settlement Agreement** will be the date on which the Court formally enters an order dismissing and ending the *Gaskin* case. The **Settlement Agreement** will remain in effect until the fifth anniversary of the **effective date of the Settlement Agreement**, after which date it shall expire and shall no longer be enforceable by either party; except that, should any dispute subject to the dispute resolution mechanism established under Section IV.10(B) of the **Settlement Agreement** be pending and unresolved on the date on which the **Settlement Agreement** expires, the Court shall retain jurisdiction for the sole purpose of resolving that dispute.

For the Plaintiffs:

JUDITH A. GRAN

Date: _____

BARBARA E. RANSOM

Date: _____

Public Interest Law Center of Philadelphia
125 South 9th St., Suite 700
Philadelphia, PA 19107
(215) 627-7100 ext. 225
(215) 627-3183 (FAX)

JOSEPH J. GASKIN
426 Arch Street
Carlisle, PA 17013
(717) 249-3776

Date: _____

For the Defendants:

MARY PATRICIA FULLERTON
Assistant Counsel
Pennsylvania Department of Education
333 Market Street, 9th Floor
Harrisburg, PA 17126-0333
(717) 787-5500
(717) 783-0347 (FAX)

Date: _____

EXHIBIT A

TO: Pennsylvania School Administrators
FROM: Linda Rhen, D.Ed.
DATE: November 1, 2004
RE: Least Restrictive Environment

The purpose of this memo is to clarify the difference between the least restrictive environment (**LRE**) requirement under the Individuals with Disabilities Education Act (IDEA) and educational placement and caseload under **Chapter 14** Special Education Regulations. This memorandum will provide guidance to local education agencies (LEAs) on the use of the **LRE** percentage reporting under IDEA versus the type of service (itinerant, resource, part time, full time) as listed under **Chapter 14**. They are not the same and there is no one to one correspondence between type of service and **LRE**.

Educational Placement (Type of Service)

The type of service refers to the service options and the amount of special education instruction received by the student, regardless of location. In addition, this section of the IEP requires IEP teams to specify the number of hours per week that the student receives special education services.

Examples:

Educational Placement: Resource Room, Learning Support

Number of hours per week the student receives special education services:

5 hours/week and speech ¾ hour/week

Educational Placement: Part-Time, Life-Skills Support

Number of hours per week the student receives special education services:

28 hours/week, speech 1 hour/week, PT 30 minutes/week.

Penn Data Information (LRE Percentages)

LRE percentages refer to the amount of time the student receives special education outside of the regular education classroom. It is literally the percentage of time the student is physically outside the general education classroom, not the amount of special education services and supports that the student receives as determined by the IEP team.

- **How do I calculate LRE percentages?**

Take the total number of hours per week the student receives special education services outside of the regular education classroom, and you divide this number by the total number of hours per week the student is in school.

Examples:

5 hours of special education per week are outside of the general education classroom/ 40 hours per week = 12%.

Mark on the IEP:

_____ "*Less than 21% outside of the regular education classroom*"

25 hours of special education services per week, of which 20 hours of supplementary support and services are in the regular education classroom. 5 hours of special education per week are outside of the general education classroom/ 40 hours per week = 12%.

Mark on the IEP:

_____ "*Less than 21% outside of the regular education classroom*"

25 hours of special education services per week, of which 5 are in the general education classroom and 20 are outside of the general education classroom. 20 hours of special education per week are outside of the general education classroom/40 hours per week = 50%.

Mark on the IEP:

_____ "*21% to 60% outside of the regular education classroom*"

- **When do I use the LRE percentages?**

LRE percentages are only to be used for students being educated in regular education buildings with non-disabled students. Statewide, this group represents approximately 96% of all students with IEPs.

Indicate on the IEP:

(1) the amount of time in the percentages section, and (2) write the name of the school under Location.

- **How do I report students not being educated in regular education buildings with non-disabled students?**

If the student is receiving special education in a location outside of a regular education building: (1) Write "N/A" in the percentages section, and (2) indicate the name of the "facility," "hospital" or write "instruction conducted in the student's home." See Annotated IEP for additional clarification (www.pattan.k12.pa.us)

- **Is it appropriate to mark Resource Room if the LRE is equal to 21-60%?**

No. Once again, there is no correlation between Type of Service and **LRE** percentages. Make sure that all IEP teams in your LEA are not automatically and incorrectly assigning **LRE** based on Type of Service.

What about full time and >61%?

No. A student may be receiving 100% of special education services in an inclusion setting, thus the **LRE** percentage is <21% outside general

education (i.e., the student is not removed from the general education classroom).

It is very important for LEAs to appropriately determine, document, and report **LRE** percentages. Pennsylvania is selecting LEAs for monitoring based on **LRE** data which the LEA reports. Please take the time to ensure that what you report is accurate.

I hope this memorandum helps clarify the difference between **LRE** percentages and Type of Service. For addition information, please contact your BSE Point of Contact.

EXHIBIT B

VI. LEAST RESTRICTIVE ENVIRONMENT (LRE)

EDUCATIONAL PLACEMENT (Type of Service, Type of Support, ex: Full-time learning support)

Annotation: VI. LEAST RESTRICTIVE ENVIRONMENT

Educational Placement: (Type of Service and Type of Support ex: Itinerant)

Type of Service: The type of service refers to the amount of special education instruction received by the student. The number of hours per week that the student receives special education services must be specified. The continuum of placements are described below. Wherever possible, special education services must be delivered and provided in the regular education environment:

1. Itinerant

Regular education classroom instruction for most of the school day with special education services and programs provided by special education personnel inside or outside of the regular education class for part of the school day.

2. Resource

Regular education classroom instruction for most of the school day, with special education services and programs provided by special education personnel in a resource classroom for part of the school day.

3. Part-time special education class in the regular school

Special education services and programs are provided outside of the regular education classroom, but in a regular school for most of the school day, with some instruction provided in the regular education classroom for part of the school day.

• **Full-time special education class**

Special education classes are provided for the entire school day, with opportunity for participation in non-academic and extra curricular activities to the maximum extent appropriate, which may be located in or outside of a regular school.

Type of Support: Students are assigned to type of support according to their learning needs and age. This support may differ from the disability category used for determination of eligibility. There are nine possible types of support:

- Autistic Support
- Blind or Visually Impaired Support
- Deaf or Hard of Hearing Impaired Support
- Emotional Support
- Learning Support
- Life Skills Support
- Multiple Disabilities Support

- Physical Support
 - Speech and Language Support

The chronological age ranges of the students in each class must not exceed three years for grades K-6 and four years in grades 7-12. Exceptions may be made by the IEP team for an individual student based upon the student's needs and must be justified in the IEP.

Examples:

EDUCATIONAL PLACEMENT (Type of Service, Type of Support, e.g., Full time learning support)

Part time emotional support

Resource learning support

Itinerant speech and language support

Explanation of the extent, if any, the student **will not participate** with non-disabled children in the regular education class and in the general education curriculum:

Annotation: EXPLANATION OF THE EXTENT, IF ANY, THE STUDENT WILL NOT PARTICIPATE WITH NON-DISABLED CHILDREN IN THE REGULAR EDUCATION CLASS AND IN THE GENERAL EDUCATION CLASSROOM

The IEP must include an explanation and a description of those activities, if any, in which the student will **not** participate with non-disabled children within the regular education class and school activities. These required IEP statements should be based on current assessments and evaluations performed with full consideration of the least restrictive environment (**LRE**) intent, including the provision of the full range of supplemental aids and services within the regular education curriculum.

It is the responsibility of each public agency to ensure that to the maximum extent appropriate, students with disabilities, including those in public or private institutions or other care facilities, are educated with children who are not disabled. Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular education classes **even with** the use of supplementary aids and services cannot be achieved satisfactorily.

QUESTIONS FOR IEP TEAM:

-What supplementary aids and services were considered? What supplementary aids and services were rejected? Explain why the supplementary aids and services will or will not enable the student to make progress on the goals and objectives (if applicable) in this IEP in the general education class.

-What benefits are provided in the regular education class with supplementary aids and services versus the benefits provided in the special education class?

-What potentially beneficial effects and/or harmful effects might be expected on the student with disabilities or the other students in the class, even with supplementary aids and services?

-To what extent, if any, will the student participate with nondisabled peers in extracurricular activities or other nonacademic activities?

Number of hours per week the student receives special education services outside of regular education classroom: _____

Number of hours per week the student receives special education services in regular education classroom: _____

Annotation: Number of hours per week the student receives special education services.

The school district is required to list the number of hours per week of special education services.

Examples:

Resource room learning support 5 hours/week and speech $\frac{3}{4}$ hour/week

Multiple disabilities support 35 hours/week, PT 1 hour/week, OT $\frac{1}{2}$ hour/week, speech $\frac{1}{2}$ hour/week,

Itinerant learning support 5 hours/week

PENN DATA INFORMATION

Percentage of time the student receives special education outside of the regular education classroom (Example: If the number of hours student receives special education outside of regular education classroom per week = 5 hours and the total number of hours of education per week = 40 hours, then calculate $5/40=12\%$. Check less than 21% outside of the regular education classroom):

_____ Less than 21% outside of the regular education classroom

_____ 21-60% outside of the regular education classroom

_____ 61% or more outside of the regular education classroom

Location: _____

Annotation: Percentage of time the student receives special education outside the regular education classroom

This section applies to students with disabilities receiving special education outside their regular education classroom in regular schools with non-disabled students.

The IEP team calculates the percentage of time the student receives special education outside the regular education classroom and indicates one of the following:

_____ Less than 21% outside of the regular education classroom

_____ 21-60% outside of the regular education classroom

_____ 61% or more outside of the regular education classroom

Examples:

If the number of hours a student receives special education outside of regular education classroom per week = 5 hours and the total number of hours of education per week = 40 hours, then calculate $5/40=12\%$. Check less than 21% outside of the regular education classroom.

25 hours of special education services per week, of which 20 hours of supplementary support and services are in the regular education classroom. 5 hours of special education per week are outside of the general education classroom/ 40 hours per week = 12%.

Mark on the IEP:

_____ *"Less than 21% outside of the regular education classroom"*

25 hours of special education services per week, of which 5 are in the general education classroom and 20 are outside the general education classroom. 20 hours of special education per week are outside of the general education classroom/40 hours per week = 50%.

Mark on the IEP:

_____ *" 21% to 60% outside of the regular education classroom"*

The information on percentage of time the student receives special education outside of the regular education classroom should be listed on PennData.

Annotation: Location

The information on location should be listed on PennData.

If the student is receiving special education in a regular building with non-disabled peers (1) indicate the percentage of time in the previous section, and (2) write the name of the school here.

If the student is receiving special education in one of the locations below: (1) Write "N/A" in the previous section (percentages), and (2) indicate the name of the "facility," "hospital" or write "instruction conducted in the student's home."

-Approved Private School (Non Residential)

- Approved Private School (Residential)
- Public Separate Facility (Non Residential), e.g., Special education center
- Private Separate Facility (Non Residential), e.g., Day student in an APS
- Public Residential Facility, e.g., State operated residential facility
- Private Residential Facility, e.g., Residential student in an APS
- Hospital/Home Bound, e.g., Long-term admissions
- Correctional Facility, e.g., Students receiving services while incarcerated
- Out of State Facility
- Instruction in the Home, e.g., IEP team placements