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## Ninth Circuit Clarifies How to Analyze Academic Benefit for “Least Restrictive Environment” Purposes Under the IDEA

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A recent decision from the Ninth Circuit Court of Appeals held that a school district’s proposed individualized education program (IEP) violated the Individuals with Disabilities Education Act (IDEA) because it required a student to spend over half of his day in a special education classroom, when his parents believed he should spend most of his day in general education. The case, *D.R. v. Redondo Beach Unified School District* (9th Cir. 2022) 56 F.4th 636, reveals important insights as to how courts will analyze the IDEA’s least restrictive environment standard moving forward.

### Background

In *D.R. v. Redondo Beach Unified School District*, the parents of a child with autism filed a lawsuit against the school district in which the child was enrolled. The dispute at issue was how much time the student, D.R., should spend in the general education classroom with non-disabled peers, versus the amount of time he should spend in a special education classroom.

Under the IDEA, school districts must ensure that all students with disabilities receive a free appropriate public education (FAPE) in the “least restrictive environment” (LRE) to the maximum extent appropriate. Pursuant to D.R.’s operative IEP, he spent 75% of his school day in the general education classroom working one-one-one with his aide using a heavily modified curriculum, and the remaining 25% of his school day receiving special education instruction in his school’s Learning Center. Although D.R. was making substantial progress on his goals, the school district argued that he lagged so far behind his non-disabled peers that he could rarely participate in activities with the rest of the class. Accordingly, when D.R.’s IEP team reconvened before his fifth-grade year, the school district proposed a new placement that would place him in a blended program, receiving most of his instruction in a special education classroom instead of in general education, so that D.R. could receive more individualized attention and a modified curriculum.

### Analysis and Holding

This case originated as a due process hearing before the California Office of Administrative Hearings (OAH). After the OAH hearing, the administrative law judge ruled that the school district’s proposed blended placement did not violate the IDEA.

D.R. then appealed to a federal District Court, which agreed that there was no IDEA violation and affirmed the OAH ruling. The parents appealed to the United States Court of Appeals for the Ninth Circuit.

The Ninth Circuit applied a four-factor test derived from the court's earlier decision in *Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) F.3d 1405 (*Rachel H.*) to determine whether the school district had complied with the IDEA's LRE requirement. The four factors the court considered were: 1) academic benefits a child receives from placement in the regular classroom compared with those available in a special education classroom; 2) non-academic benefits a child with a disability derives from being educated in a regular classroom; 3) potential negative effects the child's presence may have on the education of other children in the classroom; and 4) cost to the school district of providing the supplementary aids and services necessary to educate a child with a disability in the regular classroom.

The second, third, and fourth factors all weighed in favor of D.R. maintaining his then-current placement of 75% of his school day in the general education environment. The only factor in dispute was the first factor related to whether he obtained academic benefit. In determining that D.R. needed a more restrictive setting, the District Court and OAH both placed great weight on the fact that the student was performing several grade levels below his non-disabled peers and could not keep up with the pace of instruction in the regular classroom. The Ninth Circuit panel disagreed, stating that a satisfactory education is not a one-size-fits all concept and grade level performance is not the correct standard for all children with disabilities. Rather, "[f]or children whose developmental disabilities preclude them from achieving at the same academic level as their non-disabled peers, the appropriate benchmark for measuring the academic benefits they receive is progress toward meeting the academic goals established in the child's IEP."

Additionally, the Ninth Circuit held that the District Court erred in finding that D.R. only received academic benefit in a regular classroom because of his supplementary aids and services. The Ninth Circuit noted that a child's reliance on supplementary aids and services is irrelevant to the first *Rachel H.* factor, because students may only be moved to more restrictive placements if education in regular classes *with* the use of supplementary aids and services cannot be achieved satisfactorily. That a child relies on supplementary aids and services or requires a modified curriculum to achieve a satisfactory education in the regular classroom cannot be used against him to justify a more restrictive placement.

Per the Ninth Circuit, the determination of whether general education was the appropriate setting for D.R. should have been based on his progress toward meeting the academic goals in his IEP, which the evidence showed he clearly satisfied—rather than his failure to meet grade level standards. The Ninth Circuit distinguished this case from *Baquerizo v. Garden Grove Unified School District*, 826 F.3d 1179 (9th Cir. 2016) (*Baquerizo*), noting that, unlike the student in *Baquerizo*, who had not attended public school for years, and had no track record of success in the regular classroom, D.R. made significant academic progress in the regular classroom during the two school years prior to the school district's proposed change of placement. Thus, in the present case, there were no factors that supported moving D.R. to a more restrictive placement.

The Ninth Circuit concluded that if a child is making substantial progress toward meeting his IEP's academic goals, as was the case here, the fact that he might receive a marginal increase in academic benefits from a more restrictive placement will seldom justify sacrificing the substantial non-academic benefits he derives from being educated in the regular classroom.

As a side note, the Ninth Circuit upheld the denial of D.R.'s parents' request for reimbursement for private one-on-one educational instruction. The parents could have refused the IEP, which would have triggered California's procedural protections under the IDEA's stay-put provision and allowed D.R. to maintain his current placement. Instead, D.R.'s parents had unilaterally withdrawn D.R. from school in response to the school district's offer of FAPE, and were therefore not entitled to reimbursement. The court noted that this was especially true since the private educational setting D.R.'s parents placed him in was even more restrictive than what the school district had proposed.

## Takeaways

The decision in *D.R. v. Redondo Beach* confirms that when a school district considers whether general education placement is a child's least restrictive environment, the district needs to properly analyze whether the student is receiving academic benefit in that placement. This determination is not always based on whether the student is achieving at grade level; rather, for certain students, the crux of this decision is whether the student is making substantial progress toward their academic goals with supplementary supports and services. This holding provides helpful clarity for special education personnel when reviewing IEP offers of FAPE.

If you have any questions regarding this case or any special education matter, please contact one of the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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