

Policy Advisory

The Law on Inclusive Education

INCLUSION is the principle that supports the education of children with disabilities alongside their non-disabled peers rather than separately. Both the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Sec. 504) require schools and agencies to provide equal educational opportunities for children with disabilities. Ever since *Brown v. Board of Education* held that separate was not equal, inclusion has been part of this requirement to provide equal educational opportunities. But the primary source for the inclusion requirement is the Individuals with Disabilities Education Act or IDEA. IDEA not only supports equal educational opportunities, it specifically requires schools to support inclusion of children with disabilities through the least restrictive and natural environment mandates. For preschool and school age children (ages 3-21), IDEA requires children with disabilities to be educated in the “least restrictive environment” (§1412(a)(5) and §1413(a)(1)). For infants and toddlers (ages 0 to 3) with disabilities, IDEA promotes the use of “natural environments” for early intervention services (§1432(4)(G)).

Why does federal law support inclusion in schools and services?

While inclusion is justified as part of equal educational opportunities, in enacting IDEA (and in each subsequent revision of the law) Congress has also recognized the benefits of inclusion. Section §1400(5) of IDEA states:

“Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by . . . ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible.”

In addition to the academic benefits of inclusion, courts have long recognized

that there are non-educational benefits to inclusion that are important to the quality of life of children with disabilities—such as the opportunity to make friends and increase acceptance among their peers (*Daniel R.R. v. State Bd. of Educ.*, 1989; *Sacramento City Sch. Dist. v. Rachel H.*, 1994). Federal law thus recognizes and supports inclusion because of the developmental, educational, and social benefits that inclusion provides to children with disabilities.

How does federal law define inclusion and what does it involve?

Inclusion is not specifically defined in the law, but is supported through the equal opportunity, least restrictive and natural environment mandates. Together these requirements support inclusion in three areas: placement of the child with children who do

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not have disabilities, the child's participation in the standard educational or developmental curriculum, and participation in typical non-academic activities.

The Division of Early Childhood (DEC) and the National Association for the Education of Young Children (NAEYC) have developed a joint position statement on early childhood inclusion. For more information on that definition and specifics on access, participation and supports for inclusion, visit <http://community.fpg.unc.edu>

Policy Differences for Different Age Groups—Early Intervention (ages 0 to 3) vs. Special Education (ages 3-21)

The general principles of intervention underlying inclusion apply to children of all ages (0-21 years). They include: placement in a regular classroom and settings, access to the general development or educational curriculum, and participation in typical activities. The specific requirements for services in a natural environment (ages 0 to 3) and education in the least restrictive environment (ages 3-21) differ in two important ways.

First, for children 0 to 3 years of age, natural environments include the home (§1432(4)(G)). Even though the home is an arguably separate environment, it is considered an inclusive environment for an infant or toddler because most children without disabilities at this age are cared for in the home. In other words, the home is inclusive for infants and toddlers because it is a typical setting for infants and toddlers who don't have disabilities. For children age 3-21, the home is not considered an inclusive environment.

Second, for children 3-21 years of age, the least restrictive environment includes a continuum of placements (§ 1412(a)(5)) from fully inclusive (the general education classroom) to fully separate (special school) with a lot of different options in between (such as the use of a part-time resource room). Natural environments do not have a spectrum of inclusion—they either are natural environments or they are not. The home is considered just as much of a natural environment as a child care setting that children without disabilities attend. When trying to

decide between natural environments (i.e., the home or inclusive child care setting), either of which would qualify as “full inclusion” for an infant or toddler, the natural environment that is likely to provide the most benefit to the child should be selected (§1435(16)(B)).

How to choose an inclusive placement

Choosing an inclusive placement is the responsibility of a team working on the Individualized Education Program (IEP for children ages 3-21) or the Individualized Family Service Plan (IFSP for children ages 0 to 3). But how does the team select a placement and design a program to ensure they meet IDEA's requirements for inclusion in the least restrictive environment (for preschool and school-age children) or services in a natural environment (infants and toddlers)?

Step 1—Begin by considering full inclusion

The first step in selecting an inclusive placement and program is to start by considering full inclusion. Full inclusion is a term used by professionals to refer to the most inclusive environment possible: placement in a general education classroom and/or natural environments/early childhood setting, access to the typical curriculum and/or developmental opportunities, and participation in typical activities. While not all children with disabilities may be able to succeed with this level of inclusion, every step away from this ideal is going to be less inclusive and thus must be specifically justified in the child's IEP or IFSP (§1414(d)(1)(A)(i) and §1436(d)(5)).

Step 2 - Consider supplementary aids and services

Before moving toward a less inclusive placement, IDEA requires an IEP team to consider use of supplementary aids and services (§1412(a)(5)). Supplementary aids and services are defined by IDEA as “aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate” (§1401(33)).

IFSP teams are not explicitly required to consider supplementary aids and services (the term is not used in early intervention 0 to 3 years of age). However the requirements in the ADA and Sec. 504 to maximize placement in natural environments and to provide reasonable accommodations create a similar mandate. Put simply, if the child could succeed in a more inclusive environment through the use of assistive technology, additional classroom supports, or other means, these aids and services should be provided and the child should be placed in the more inclusive program.

Step 3 – Reduce inclusion only to ensure benefit

If, even after considering possible supplementary aids and services, the child cannot succeed in a more inclusive setting because of his or her disability, it is appropriate to start considering a less inclusive program. The key is to reduce inclusion only to the extent necessary to ensure the child will benefit from the placement and program.

Selecting the least restrictive environment means that you move along the continuum toward a more segregated setting one step at a time or modify the curriculum only to the extent necessary. Even if a child cannot be included in the general education classroom all the time, he or she might be able to participate part of the time and also be included in nonacademic activities and extracurricular activities. Remember the three components of inclusion: placement, access to educational opportunities, and activities—reducing inclusion in one area does not mean inclusion should be reduced in others.

To comply with the natural environment requirement, selecting a service setting that is not a natural environment should be specific to the particular service and the need it addresses. Even if the IFSP team finds that some services cannot be successfully provided in a natural environment, it does not mean that all services must be provided in non-natural environments.

Step 4 – Record the decision in the IEP or IFSP

Virtually all aspects of the process for selecting the final choice of an inclusive program must be recorded on the IEP or IFSP (§1414(d)(1)(A) and §1436(d)). The written plan must record how the child’s disability affects his or her inclusion in the curriculum or learning activities. Any exclusion from an inclusive environment or natural environment must be justified based on the child’s disability (including exclusion related to nonacademic and extra-curricular activities). Aids, services, program modifications, and other supports that will be provided to increase inclusion must be specifically identified.

Summary: Three steps to compliance with inclusion requirements

IDEA can be complicated and the rules for inclusion are no exception. This advisory only discusses the general rules. But if you want an easy way to ensure compliance without having to learn all of the ins and outs of the inclusion mandate in federal law, simply do the following:

- (1) Think of children with disabilities as children first and foremost, wanting and needing all the same developmental and educational opportunities as children who are developing typically.
- (2) Do whatever you can—provide any aids and services—that will prevent separating children with disabilities from their peers in placement, in what they are taught, or in any other activities.
- (3) Use separate curricula, classroom, learning opportunities, or activities only when you cannot find another way for the children to benefit developmentally, academically or otherwise participate in a particular activity. Minimize the extent children are separated from their peers.

References

Americans with Disabilities Act of 1990 (ADA), Pub. L. No. 101-336. For complete source of information, go to <http://www.ada.gov>

Daniel R.R. v. State Board of Educ., 874F.2d 1036 (5th Cir. 1989). For complete source of information, go to <http://cases.justia.com>

Individuals with Disabilities Education Act of 2004 (IDEA), Pub. L. No. 108-446. For complete source of information, go to <http://idea.ed.gov/>

Rehabilitation Act of 1973, Pub. L. No. 93-112. For complete source of information, go to <http://www.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html>

Sacramento City School Dist. v. Rachel H., 14 F.3d 1398 (9th Cir. 1994). For complete source of information, go to <http://cases.justia.com>

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