



Q&A

Least Restrictive Environment and the Continuum of Educational Placements: The Use of a One-To-One Aide in a General Education Classroom versus Placement in a Self-Contained Classroom Without One-To-One Support

Produced by Maryland Disability Law Center
under a subcontract with Neighborhood Legal Services
Leslie Seid Margolis

December 2006

Q: Is placement of a student in a general education classroom with a one-to-one aide more or less restrictive than placement of the student in a self-contained classroom without a one-to-one aide?

A: Generally, in the continuum of restrictiveness of placement options, placement of a student in a general education classroom with a one-to-one assistant is less restrictive than placement of the student in a self-contained special education class. However, it is not uncommon for advocates to face an argument by school district staff that placing a student in a general education classroom with a one-to-one aide will be more restrictive, isolating, and stigmatizing to the student than placing him or her in a separate special education classroom. Sometimes, parents or the student him or herself may perceive the aide as isolating or stigmatizing. It is important to ensure that one-to-one assistants receive sufficient training and clear direction as to their responsibilities and that necessary supports and services are provided to the student so that he or she does not become isolated in the general education classroom. While there are no reported cases addressing this issue, this month's Q & A will review the hearing decisions that have focused on the issue of placement of students in general education classrooms with one-to-one assistants instead of separate classrooms or separate schools, and will discuss advocacy strategies and issues to consider when facing this situation.

Overview of Hearing Decisions

There are no reported cases directly addressing the use of one-to-one aides in general education versus placement in a separate setting. However, there are a number of hearing decisions that have addressed the issue. In one of the first reported decisions, *In re: Milpitas Unified School District*, California State Educational Agency, SE 82-11 (February 2, 1982), 503 IDELR 254, the hearing

officer upheld the parents' request for regular education placement with a tutor to assist the student with reading and language arts, rather than the district's request for a private school placement.

In *Jeffrey M. v. Holbrook Public Schools*, Massachusetts State Educational Agency, 89-0106 (April 26, 1989), 401 IDELR 311, the hearing officer ruled against the parents, who were seeking a small group, highly structured special education placement for their son, who had attention deficit disorder and a mild learning disability. Instead, the hearing officer found that placement in a regular classroom with an aide and nine hours a week of special education services was appropriate. In *Cobb County Board of Education v. Jennifer K.*, Georgia State Educational Agency, SE 89-01 (May 16, 1989), 401 IDELR 338, the school district wanted to remove the student with Down Syndrome from a regular kindergarten class in her neighborhood school to a special education class in a centrally located school over her parents' objection. The review hearing officer found that the appropriate placement for the student was the regular kindergarten class in her neighborhood school with an aide because the student was making some progress in the class, even though she was at the bottom of the class; the hearing officer noted that the school district was not required to provide the best education it had available and that the neighborhood school placement with an aide met the least restrictive environment requirements of the law.

Similarly, the parents prevailed in *Board of Education of the Baldwin Union Free School District*, New York State Educational Agency, 93-29 (August 10, 1993), 20 IDELR 403. The state review officer held that a district may place a student in a more restrictive placement only after supplementary aids and services have been provided and have been unsuccessful. In this case, the district had rejected the provision of a one-to-one aide to address the student's behavioral needs, although academically, he had the ability to function within the regular education setting. Likewise, a one-to-one aide was ordered to maintain a student in a public school setting, rather than a residential setting in *St. Mary's County Public Schools*, Maryland State Educational Agency (February 23, 1994), 21 IDELR 172.

Interestingly, the student's parents adamantly opposed provision of a one-to-one aide in *Mountain Lakes Board of Education*, New Jersey State Educational Agency, 2538-94 (July 15, 1994), 21 IDELR 962. The school district sought a separate special education placement for part of the day; his parents sought a completely inclusive placement without an aide. The hearing officer determined that the appropriate placement for the student was a regular education class with the provision of a one-to-one aide. The hearing officer found that the student had made significant progress the previous year and during the current year with an aide and that he had not been stigmatized, belittled, or treated differently as a result. In fact, the parents had testified that the student had more friends than he had ever had before, and had made academic in addition to social progress. In addition to other directives, the hearing officer issued an order that included a

requirement of applied behavior analysis training for the aide and family counseling for the student's family for the upcoming school year.¹

In *San Diego City Unified School District*, California State Educational Agency, 958-94 (December 8, 1994), 22 IDELR 75, the hearing officer found that the placements proposed by both the school district and the parent for an 11 year old student with autistic-like behaviors were appropriate. Instead, the hearing officer ordered the parties to develop a public school placement that offered the academic program the student required, with the assistance of a one-to-one aide. The hearing officer acknowledged that the student might not need the aide for the entire school year but noted that the decision must be made by the IEP team, not unilaterally by the district.

The hearing officer in *Wallingford Board of Education*, Connecticut State Educational Agency, 03-018 (August 6, 2003), 40 IDELR 169 ordered the school district to assign a one-to-one paraprofessional to work with the student at all times during the school day in a case involving a sixth grader with learning and emotional disabilities who had a history of sexual abuse and who began to make attention-seeking inappropriate sexual comments to his peers during unstructured time at school. The hearing officer specified that the paraprofessional should facilitate communication between the student's parents and teachers and other service providers with respect to homework assignments, test schedules, school activities, and behavioral issues. The hearing officer also ordered goals, objectives, and a behavioral plan based on the expert report that had been presented at the hearing, and ordered the board to retain the services of an expert who specializes in working with children with emotional disturbance, preferably one with expertise with children who have been sexually abused. The hearing officer specifically found that the out-of-district therapeutic school proposed by the district was not the least restrictive environment for him.

In *Greenwich Board of Education*, Connecticut State Educational Agency, 03-280 (October 7, 2003), 40 IDELR 223, the hearing officer ordered the district to provide a one-to-one aide for a student with emotional disturbance in order to allow him to attend a regular high school instead of a highly restrictive alternative program. The hearing officer noted that the student did not need an aide to be constantly with him; rather, he needed someone to mediate to avoid conflicts by consistently observing, offering guidance, and stepping in when necessary. The hearing officer stated that the aide could be relatively inconspicuous and non-stigmatizing if well-trained and if he or she intervened only when necessary.

¹ The only hearing decision in which a hearing officer found that provision of an aide would be stigmatizing is a very early but undated decision, *Kalamazoo Valley Intermediate School District*, Michigan State Educational Agency (H-487), 501 IDELR 174. The hearing officer held that provision of an aide to the 20 year old student with intellectual and behavioral disabilities in a regular high school would inhibit her independence because of the size of the school building and would inhibit any peer or normal student relationships that might otherwise be possible. The hearing officer ordered continued placement at the special education school the student had been attending.

Considerations/Advocacy Strategies

From a legal standpoint, there seems little dispute that provision of a one-to-one aide in a general education classroom is less restrictive than placement of a student in a self-contained special education classroom. Attorneys and advocates can support this argument with 34 C.F.R. 300.114(a)(2), which requires that “to the maximum extent appropriate, children with disabilities are educated with children...who are nondisabled,” and that “special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” This provision does not stop IEP teams from arguing that provision of a one-to-one aide will be isolating or stigmatizing, or that the student will become dependent on the aide, or that the student will have more ability to interact with peers in a separate special education class. From a practical standpoint, attorneys and advocates need to be prepared to address these arguments.

The key is to determine what the role of the one-to-one aide will be for the student. Is the aide needed all of the time? Sometimes? For what tasks? Physical assistance? Academic assistance? Behavioral assistance? A combination of tasks? Will the aide play a communication role between home and school? Is the student verbal? The role of a one-to-one assistant assigned to a student with emotional disturbance who needs an aide to help him avoid disputes will be very different from that of the one-to-one assistant assigned to a student with Down Syndrome, for example.

It is also important to determine what other supplementary aids and services and programmatic supports and modifications are necessary in addition to the support provided by the one-to-one assistant. Assistive technology, a behavior intervention plan, curriculum adjustments, classroom modifications, staffing changes, and other related services are all means by which a student’s program can be individualized to support his or her placement in the general education classroom and by which the role of the one-to-one assistant can be defined and supported. For example, training for the assistant can be included on the IEP as a programmatic support. The assistant may need training in a variety of areas such as the student’s disability, or the assistive technology used by the student or implementation of the student’s behavior plan. The assistant may need training in how to facilitate social interaction between the student and his or her peers or in how to fade assistance to the student over time. Or the assistant may need training in how to properly handle the student if the student has physical disabilities. Any training the assistant needs should be specified on the IEP. Additionally, planning time for the assistant and the student’s teacher and other service providers should be included as a programmatic support as well.

With respect to the stigma issue, particularly for older students who have an opinion about the matter, it is important to include the student in the

decisionmaking process. Some students like having a one-to-one aide; some do not. It is important, to the extent possible, for students and parents to have some participation in the aide selection process or to be able to voice concerns if the match is a particularly unsuccessful one.

On occasion, the issue of attachment arises. The district agrees that the student needs one-to-one assistance but refuses to assign one person to the student, instead assigning full-time adult assistance, arguing that it would be harmful to the student to get attached to one person. The advocacy response to this action will need to depend on the student and his or her individual needs. On rare occasions, this argument may have some validity; most of the time, however, it appears to be a cost-saving measure that allows schools to combine staff or use parent volunteers in the classroom. The danger of having multiple assistants for a student is that when everybody is responsible, nobody is responsible. Communication becomes problematic, the student may become confused by having multiple people acting as his or her assistant, there is no clear line of authority, and accountability is lost. Particularly if safety issues are involved, it is inappropriate to utilize multiple assistants for a student. Advocates and attorneys should ask the district to produce evaluations or other documentation to establish that provision of a regular one-to-one assistant would cause an attachment that would be harmful to the student. In most situations, it is unlikely that the district will be able to do so.

Conclusion

Provision of one-to-one aides is an effective method of enabling students to remain in general education classrooms instead of being removed to more restrictive separate special education classrooms or schools. Adequate training and provision of additional supplementary aids and services and programmatic supports and modifications are necessary to ensure that aides are utilized effectively.