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How to Determine the Least Restrictive Environment for Students with Disabilities

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The Individuals with Disabilities Education Act (IDEA) requires that students with disabilities be educated with peers without disabilities “to the maximum extent appropriate.” When the individualized education program (IEP) team is reviewing the student’s current performance, establishing the student’s goals, and determining the services that the student will require, they must also identify the least restrictive environment (LRE) in which these services can be provided. In this article, we (a) define LRE, (b) summarize the legislation and case law that impacts the selection of the LRE, and (c) offer a decision tree for IEP teams determining a student’s LRE.

Since 1975, the Individuals with Disabilities Education Act (IDEA; formerly the Education of All Handicapped Children Act) has required schools to provide a free appropriate public education (FAPE) to students with disabilities. That FAPE should allow students with disabilities to be educated with peers without disabilities in the least restrictive environment, specifying that:

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 that 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 classes with the use of supplementary aids and services cannot be achieved satisfactorily. (IDEA, 20 U.S.C. § 1412)

This language clearly established that (1) students with disabilities had a right to be educated with their peers without disabilities, and (2) schools had to make serious efforts to identify

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and educate students in the least restrictive setting, even if that required the school to provide supplementary aids and services.

Nonetheless, it is important to recognize the LRE is not a specific placement nor is there a single definition of what the least restrictive environment (LRE) is for each student (Crockett & Kauffman, 2005; McColl, 1992; Osborne, 1993; Osborne & DiMattia, 1994; Palley, 2006). Although schools are required to integrate students with disabilities, preferably in the general education environment, there is a recognition that some students would not benefit from full inclusion because the nature of their disability would prevent them from being successful without additional supports. In these cases, schools are expected to identify ways for those students to access the general education curriculum, integrated setting (e.g., cafeteria, computer lab, media center, library), specials (e.g., physical education, music, art), and other extracurricular activities that students without disabilities routinely access. The school also bears the burden of identifying supplementary services, modification, and accommodations that may allow the student with a disability to be successful in those integrated settings. Only after these efforts have been made can a student, because of the nature or severity of the disability, be placed in a more restrictive setting, such as a special classroom or alternative school. Next we discuss federal legislative initiatives and case law that has influenced how schools determine the LRE.

LEGAL INFLUENCES

In 1954, the U.S. Supreme Court overturned *Plessy v. Ferguson* in its *Brown v. Board of Education* decision stating that, "In the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal" (p. 9). Advocates for individuals with disabilities used the rationale behind that ruling to argue that students with disabilities should be included in public schools, not separated in institutional settings as many were at the time. In 1975, Congress responded with the Education of All Handicapped Children Act, which guaranteed a FAPE for all students with disabilities. That FAPE was to be provided in the least restrictive environment to ensure that students with disabilities could receive a meaningful education at public expense (Kauffman & Hallahan, 2005; Lewis, Chard, & Scott, 1994; Palley, 2006; Stafford, 1978; Turnbull, 1993). Since that time, schools have occasionally struggled to provide that FAPE to students with disabilities in the LRE.

When schools and parents disagree about what constitutes the LRE that is best for an individual student with disabilities, their remedy is due process with hearing officers and eventually the courts. Initially, a case will be heard in the appropriate district court and that ruling will apply to that particular case. If the losing party appeals in district court and the case is heard in a circuit court, then the circuit court ruling will be the "case law" for that circuit. A circuit court ruling is legally binding in that circuit only (see Table 1 for a description of which states are a part of each circuit); that means, a ruling in one part of the country does not necessarily apply to another part of the country. The only time a court decision would apply to the entire country is when the U.S. Supreme Court hears and rules on a case.

Since the inception of IDEA, there have been a number of court decisions that have greatly influenced how parents and schools negotiate the, at times very complicated, LRE decision-

TABLE 1
Circuit Courts and Their Respective States/Territories

<i>Circuit Court Number</i>	<i>States/Territories Included</i>
1	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island
2	Connecticut, New York, Vermont
3	Delaware, New Jersey, Pennsylvania, U.S. Virgin Islands
4	Maryland, North Carolina, South Carolina, Virginia, Washington DC, West Virginia
5	Louisiana, Mississippi, Texas
6	Kentucky, Michigan, Ohio, Tennessee
7	Illinois, Indiana, Wisconsin
8	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
9	Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Mariana Islands, Guam
10	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming
11	Alabama, Georgia, Florida

making process. The U.S. Supreme Court has not heard and ruled on an LRE case, but lessons from circuit court rulings (i.e., the case law) can be used to guide what would be considered “best practice” in determining the LRE for a student with disabilities. Table 2 briefly summarizes the issues of these circuit court cases, highlighting the final case outcomes.

Although less precedent setting than circuit court cases, district court cases, whose rulings apply to the specific case, can offer useful lessons. For example, in *MR v. Lincolnwood Board of Education* (1994) the Northern District of Illinois ruled that the most appropriate LRE for a student with emotional and behavioral disorders was not the inclusive general education environment; given the school’s unsuccessful attempt to “mainstream” the student, the court ruled that the LRE for this student was a therapeutic day school. As such, in Table 3, we have highlighted several district court cases. In the next section, we attempt to offer specific suggestions that apply these rulings for determining the appropriate LRE for a student with disabilities.

DETERMINING LEAST RESTRICTIVE ENVIRONMENT

Educational professionals on individualized education program (IEP) teams are challenged to meaningfully integrate students with disabilities in the least restrictive environment. Having to understand federal legislation and years of case law, which at times creates complicated or contradictory procedures or benchmarks for schools, is not an easy undertaking for IEP teams. In this section, we attempt to make the task more manageable by (a) summarizing the continuum of alternative placements; (b) suggesting questions, based on case law, for consideration when placing students; and (c) offering a decision tree to aid the selection of the least restrictive environment for students with disabilities.

TABLE 2
U.S. Circuit Court Cases that Offer Guidance for the IEP Team to Consider When Making the LRE Decision

<i>Case and Year</i>	<i>Circuit</i>	<i>Disability</i>	<i>Description</i>	<i>Outcome</i>
<i>Roncker v. Walter</i> (1983)	6	Cognitive Disability	A mother challenged the school's placement of her son in a school exclusively for children with cognitive disabilities because her son would receive no contact with students without disabilities	The <i>Roncker Portability</i> test (see Table 4 for details) should be used to determine appropriate placement.
<i>Daniel R. R. v. Board of Education</i> (1989)	5	Down Syndrome	Daniel's parents requested that he attend a half-day program with non-disabled peers as opposed to remaining in a special education program for the full day.	The <i>Daniel two-part test</i> (see Table 4 for details) is used to determine the students' LRE.
<i>Greer v. Rome City School District</i> (1991)	11	Down Syndrome	Greer's parents felt that the IEP prepared by the school was inadequate because it placed her in a self-contained classroom.	The school's IEP was inadequate as Greer could be educated in the regular classroom if she were provided with the appropriate supplemental aids and services.
<i>Oberti v. Board of Education</i> (1993)	3	Down Syndrome	Oberti was removed from the regular classroom and placed in a segregated special education class and Oberti's parents objected.	The school did not mainstream Oberti to the maximum extent possible, did not provide an IEP that met the student's needs and did not adequately consider all supplemental aids and services, and therefore the placement was not valid.
<i>Sacramento City Unified School District v. Rachel H.</i> (1994)	9	Cognitive Disability	The school district appealed the district court's decision to place Rachel in a full time regular classroom with support services.	The benefits of a mainstream setting outweighed the benefits of a part-time special education. The <i>Rachel four-factor</i> test (see Table 4 for details) was established.

(continued)

TABLE 2
(Continued)

<i>Case and Year</i>	<i>Circuit</i>	<i>Disability</i>	<i>Description</i>	<i>Outcome</i>
<i>Clyde K. v. Puyallup School District</i> (1994)	9	Tourette Syndrome ADHD	The school removed the student from the regular classroom setting and proposed an alternative placement in a self-contained off campus program. The student's parents objected.	The school did not violate the student's rights under IDEA as he was receiving no academic benefit from his regular classroom placement.
<i>Poolaw v. Bishop</i> (1995)	9	Profoundly Deaf	Parents insisted that the student be mainstreamed in a local elementary school while the school proposed sending the student to a specialized program 280 miles away.	The specialized program was the closest facility equipped to provide the student with the services needed while mainstreaming the student would provide no educational benefit.
<i>Flour Bluff Independent School v. Katherine M.</i> (1996)	5	Hearing Impairment	The student was mainstreamed with an interpreter and supportive students and the parents wanted her transferred to a school closer to home.	The school was not in violation of IDEA and courts need to consider both the cost (financial and resource) of implementing an individual program along with the cost of duplicating programs.
<i>Hartmann v. Loudoun County Board of Education</i> (1997)	4	Autism	The school proposed moving the student to a self-contained class for students with autism within the regular school and the parents claimed that their son would not be with nondisabled peers to the "maximum extent possible" under IDEA	A self-contained class with partial mainstreaming was appropriate and allowed the student to interact with nondisabled peers to the "greatest extent possible" given his needs.

TABLE 3
U.S. District Court Cases that Offer Guidance for the IEP Team to Consider When
Making the LRE Decision

<i>Case and Year</i>	<i>District</i>	<i>Disability</i>	<i>Description</i>	<i>Outcome</i>
<i>MR v. Lincolnwood Board of Education (1994)</i>	Northern District of Illinois	Emotional Disorder	The school recommended placing the student in a therapeutic day school while the parents insisted on an inclusive setting.	The district attempted to mainstream the student and because the efforts were unsuccessful for both the student and his peers the therapeutic day school was the appropriate educational setting.
<i>Hudson v. Bloomfield Hills School District (1995)</i>	Eastern District of Michigan	Cognitive Disability	The school district recommended an all-day special education school with partial time in special education classes and the remaining time in general education while the parents wanted the student to attend the neighborhood school.	The school's placement held as no amount of supplementary aides and services would meet the student's education needs in the neighborhood school.

What Are More Restrictive Settings? The Continuum of Alternative Placements (CAP)

As a basic principle it is clear that (1) the least restrictive setting for any student is the general education environment, and (2) any other setting would be considered more restrictive. That said, the LRE for an individual student with disabilities is difficult to establish. The purpose of the CAP is to offer IEP teams a range of options when determining the most appropriate LRE for the student. If the general education environment has been considered and the school feels that it cannot provide an appropriate education in that setting, then the school can consider another, more restrictive placement option. Legally, schools are required to maintain a continuum that offers a range of placements where students with disabilities can be educated (Bartlett, 1993; Crockett & Kauffman, 2005; Gorn, 1996; Palley, 2006; Yell, 1994); regulations from the U.S. Department of Education's Office of Special Education Programs specify that:

- (a) Each [school district] shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services
- (b) The continuum required . . . must:
 - (1) Include the alternative placements; and
 - (2) Make provision for supplementary services to be provided in conjunction with regular class placement. (IDEA Regulations, 34 C.F.R. § 300.551)

There has been some debate about what qualifies as a more restrictive setting (Carr, 2005; Crockett & Kauffman, 2005; Dubow, 1989; Kluth, Villa, & Thousand, 2002; Palley, 2006; Sharp & Pitasku, 2002; Villa & Thousand, 2003); however, most professionals agree that

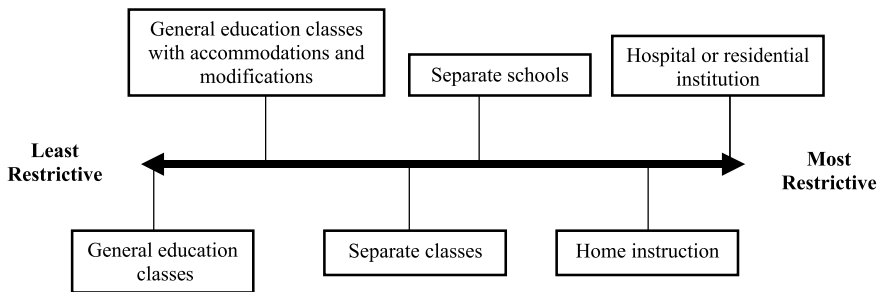


FIGURE 1 The continuum of alternative placements.

the more removed from the general education environment and curriculum a student with a disability is, the more restrictive the setting. Measured in time, a student with a disability who spends 75% of the instructional day in a non-integrated setting without access to the general education curriculum is in a more restrictive setting than a student who is also in a non-integrated setting for 75% of the day but is engaged in the general education curriculum. Although the environment/curriculum differentiation make it difficult to clearly establish a clear CAP that would work for all schools and there is some debate about whether some settings are more restrictive than others (e.g., institutional or homebound placement), Figure 1 outlines common settings from the least to most restrictive (IDEA Regulations, 34 C.F.R. § 300.551).

At times, schools with limited resources argue that they cannot afford to provide a full range of placements along the continuum. For example, in the case of *Flour Bluff Independent School District v. Katherine M.* (1996) the court found for a student who was deaf that the placement in a mainstream classroom other than her neighborhood school was the LRE because the financial and resource costs of duplicating the program in the student's home school setting were prohibitively high. Despite this case, however, it has been made clear that a school district cannot refuse to place a child in the LRE because it does not have that specific placement option in its district (Tucker & Goldstein, 1992). If a district lacks access to a specific placement option that would be less restrictive than the ones it maintains within its district boundaries, then the school district must provide its students with disabilities access to these other placement options. To do this schools often develop collaborative arrangements with other nearby districts, although at times the school must send the student, at the school's expense, to another public or private school, to provide the appropriate placement. Conversely, a student's LRE might be more restrictive than the placements the district maintains and the school may be required to place a student outside their district if the student's needs warrant this (e.g., *Poolaw v. Bishop*).

Questions to Consider When Making the LRE Placement Decision

Because there are a myriad of factors that must be considered when attempting to make the challenging LRE decision for a student with disabilities, there is no simple set of rules that the IEP team can follow (Champagne, 1993; Kluth, Villa, & Thousand, 2002; Sharp & Pitasku, 2002; Yell, 1995). Case law, however, has provided general guidance that will aid an IEP team when making the decision for what should be the student's primary placement. In this section,

we will briefly outline the process and offer a series of questions that should be considered by IEP teams.

When initially deciding the appropriate LRE for a student, the first step is to determine if the student is eligible for services. Although the evaluation process will not be discussed in great detail, it is important to note that the question of whether a student qualifies for special services is not a simple one. A single assessment cannot be the sole source of evidence that determines whether a student qualifies for special services. During the evaluation process, multiple assessments must be administered to the student and data should be collected from parents, teachers, and related service professionals. Only when the data suggests that a student is not making adequate progress in the general education setting despite interventions in place (i.e., research-based methods, small group instruction, instructional support from a specialist) will the student be considered for special education. If the multidisciplinary team determines that the student is eligible for services, the next step is to determine what his or her educational services should be as well as the frequency and duration of those services. Finally, the team must make the complicated decision about the most appropriate and least restrictive placement.

The need for the thoughtful consideration of the LRE stems from case law, specifically the case of *Daniel R. R. v Board of Education* (1989), which established the Daniel two-part test. The first part of the test, which pertains to this step in the LRE decision process (the second part will be addressed later), asks if the student's education can be achieved in the general education setting. If the answer is simply yes, then that general education setting is the LRE. If the IEP team believes that the student could be successful with supplementary services, accommodations, and/or modifications, then this environment with the additional supports becomes the student's LRE and educational placement.

Unfortunately for IEP teams, the placement decision is often more complicated and the unmodified general education setting cannot serve as the appropriate placement. At this point, the IEP team must consider additional factors that impact the placement decision. The ruling in *Sacramento City Unified School District v. Rachel H.* (1994) provides additional guidance regarding the suitability of the general education setting to be the primary placement. Specifically, schools need to consider:

1. What are the educational benefits of the special vs. general education setting?
2. What are the social benefits of being educated with his or her peers?
3. What is the negative impact of the student with disabilities in the general education classroom?
4. What are the costs of the general education placement?

Failure to address these questions may result in an inappropriate placement for a student and result in possible action against the school as shown in the cases of *Greer v. Rome City School District* (1991) and *Oberti v. Board of Education* (1993; again, summarized in Table 2).

If, after addressing these questions, the IEP team decides that the general education setting with or without modifications is not appropriate, the next step is to identify the alternative placement options, clearly establishing the continuum of alternative placements from least to most restrictive (again, see Figure 1). If the student can be successful in the least restrictive of the settings on the continuum of alternative placements established by the IEP team, then that setting becomes the student's primary placement. If not, the process repeats itself, moving to

a slightly more restrictive setting on the continuum, until the least restrictive environment can be identified.

In the case of *Daniel R. R. v Board of Education* (1989), the school clearly demonstrated appropriate use of this continuum and decision-making process. At first, the school attempted to educate Daniel for half a day in general education and half a day in special education but, after considering the request made by his teacher, later moved him into a full-day special education placement. Although the parents objected and filed suit, the court ruled in favor of the school as the district demonstrated that Daniel was not able to participate meaningfully and, in fact, failed to master any skills being taught in the general education classroom. However, the court also noted that the district was required to make additional considerations, specifically the second part of the Daniel two-part test, which asks if the student is integrated to the maximum extent possible when placed in a restrictive setting. This test requires IEP teams, after determining the correct placement, to identify opportunities throughout the school day to include the student with disabilities (e.g., physical education, art, music, lunch, recess, etc.) and determine if the student can be successful in those areas with modifications and/or accommodations. If it is possible for the student to be included with students without disabilities in additional areas without hindering his or her educational progress, that placement is maintained. If there is no educational benefit to integrating the student, then the primary placement is maintained without these inclusions.

Summary. Case law provides guidance to a very difficult process but is, at times, a challenge to follow. Table 4 outlines the questions gleaned from case law that IEP teams should consider when determining a student's LRE.

The LRE Decision Tree

Although those questions will provide some guidance to IEP teams, a more detailed process, such as the decision tree shown in Figure 2, can help IEP teams to work systematically through the LRE deliberations. It is important to note that this process is useful when initially identifying and placing students with disabilities in the LRE. However, IEP teams should also use this process during annual IEP reviews and reevaluation meetings. The current placement should not be the de facto placement for a student with a disability because over the course of an academic year the student may gain the skills necessary to succeed in a less restrictive setting. By revisiting the decision tree when the IEP team conducts annual reviews and reevaluations, the student's placement will remain closely monitored and help ensure, given the specific educational needs of the student, that the placement remains the student's LRE.

SUMMARY

In establishing the mandate for the LRE in the IDEA, the federal government required schools to establish a clear continuum of alternative placements and encouraged IEP teams to include students with disabilities in the general education environment. Conceding that some students with disabilities, regardless of the level of support, cannot be successful in the general education environment, the law does require a range of placement options that vary in the degree of

TABLE 4
 Questions for the IEP Team to Consider When Making the LRE Decision

<i>Court Case</i>	<i>Questions to Consider Based on Court Rulings</i>
<i>Roncker v. Walter</i> (1983)	<p><i>Roncker portability test:</i></p> <ol style="list-style-type: none"> 1. If a segregated setting appears to be the preferable placement, could the services provided in the segregated setting be feasibly provided in a setting that is not segregated?
<i>Daniel R. R. v. Board of Education</i> (1989)	<p><i>Daniel two-part test:</i></p> <ol style="list-style-type: none"> 1. Can the education be achieved in the general education classroom with supplemental services? 2. If the student is placed in a restrictive setting, is the student integrated to the maximum extent possible?
<i>Greer v. Rome City School District</i> (1991)	<ol style="list-style-type: none"> 1. Is a placement in the least restrictive environment (general education classroom) appropriate for the student's needs?
<i>Sacramento City Unified School v. Holland</i> (1992)	<ol style="list-style-type: none"> 2. If so, will the student receive an appropriate education with supplemental aids and services?
<i>Oberti v. Board of Education</i> (1993)	
<i>Sacramento City Unified School District v. Rachel H.</i> (1994)	<p><i>Rachel H. four-factor test:</i></p> <ol style="list-style-type: none"> 1. What are the educational benefits of the special vs. general education setting? 2. What are the social benefits of being educated with his or her peers? 3. What is the negative impact of the student with disabilities in the general education classroom? 4. What are the costs of the general education placement?
<i>MR v. Lincolnwood Board of Education</i> (1994)	<ol style="list-style-type: none"> 1. How will the student's placement impact the learning of classmates without disabilities? 2. Is the student more likely to have a successful educational program in a self-contained classroom or a separate school with a structured program and supports?
<i>Clyde K. v. Puyallup School District</i> (1994)	<ol style="list-style-type: none"> 1. Is the student making adequate progress and benefitting academically from a general education placement?
<i>Flour Bluff School District v. Katherine M.</i> (1996)	<ol style="list-style-type: none"> 1. Is the student placed in the school and district that is closest to home?
<i>Hudson v. Bloomfield Hills School District</i> (1995)	<ol style="list-style-type: none"> 2. Does the school closest to home have the supports/resources necessary for an appropriate education program for the student?
<i>Poolaw v. Bishop</i> (1995)	<ol style="list-style-type: none"> 1. Will mainstreaming the student be the most educationally beneficial placement for him/her?
<i>Hartmann v. Loudoun County Board of Education</i> (1997)	<ol style="list-style-type: none"> 1. Is the student placed with nondisabled peers to the "maximum extent appropriate" under IDEA?

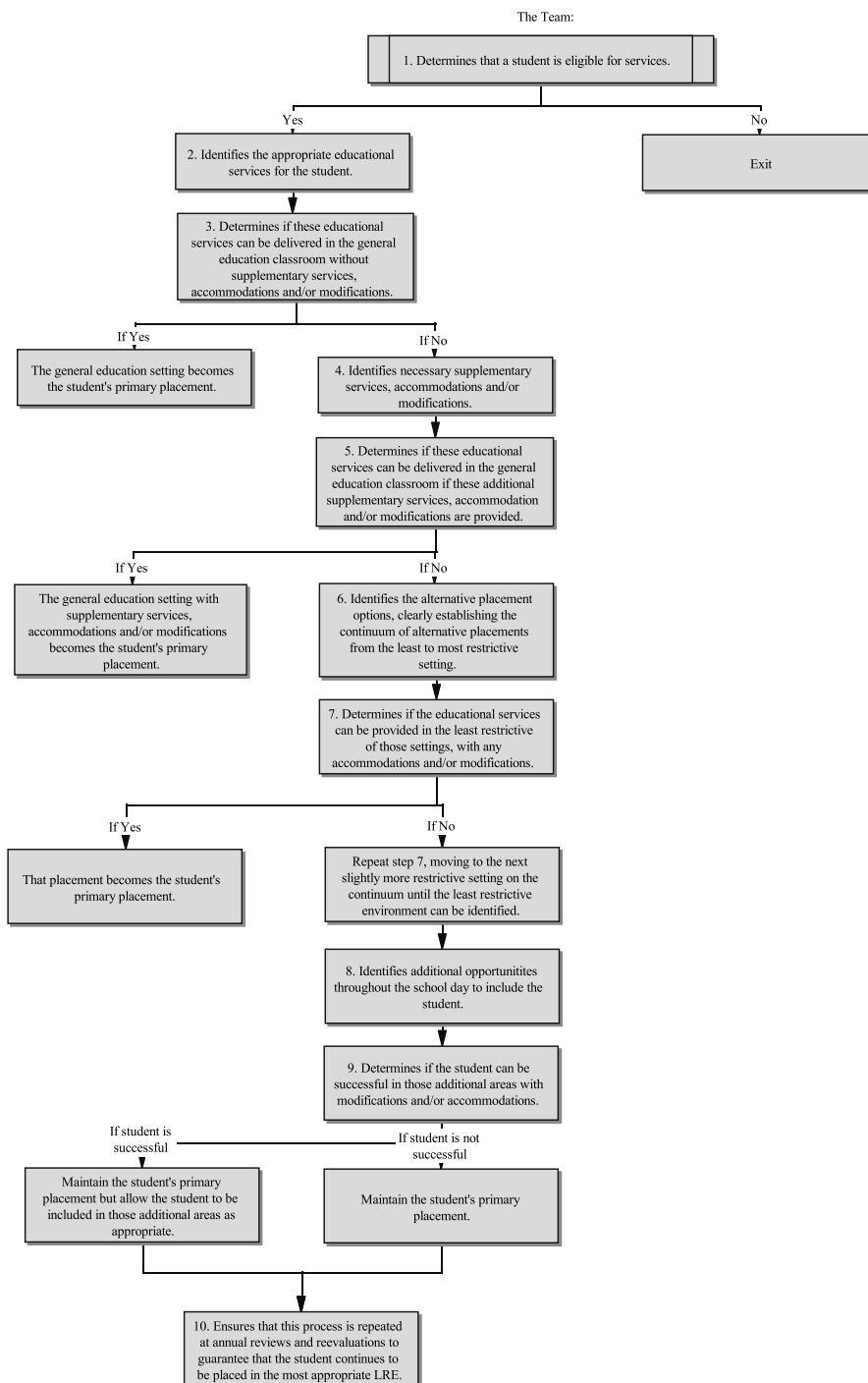


FIGURE 2 The LRE decision tree.

restrictiveness. Nonetheless, the mandate for the LRE requires that, “to the maximum extent appropriate,” students with disabilities be educated alongside their peers without disabilities. If a student with a disability is to be removed from the general education setting because the severity of the disability prevents the student from receiving an appropriate education, the school is responsible for documenting that all supplementary services, accommodations, and modifications have been seriously considered in an attempt to include the student. This requires schools to decide on a student’s placement after a thoughtful review of ways to include the student. The courts have consistently established that the school must make significant efforts to ensure that a student is educated in the least restrictive environment possible.

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