



# Special Education Placement Determinations:

## *SDI and LRE Considerations for IEP Teams*



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### Introduction

The Oregon Department of Education (ODE) believes that:

- Disability is to be appreciated as a natural part of the human experience that makes our families and communities stronger.
- Families have the right to enter into relationships with educators trusting that their child will be welcomed, loved, and seen in all of their human dignity, including their culture, race, and/or disability.
- All learning environments should be inclusive, culturally responsive, and identity affirming.
- Every student should learn and thrive together with their peers, friends, and neighbors. Students achieve their best self when nurtured by empowered families, educators, and communities.
- Education is enhanced and strengthened through a network of professionals, parents, and community members.

Quality learning experiences require deep interpersonal relationships and a learning environment where people feel safe, seen, and valued. Since school and learning happen in the context of community, these experiences become harder to create as learning environments get more restrictive. Accordingly, most students experiencing disabilities are best served in person, for full school days, in regular classes alongside their same-age peers.

The IEP team for each student experiencing disabilities – including the parent and, where appropriate, the student – is responsible for developing a shared vision of success for the student and an individualized educational program (IEP) that will enable the student to achieve that vision. Regular education provides the foundation that enables students to achieve that vision. Special education provides specially designed instruction (SDI) and related services to support the student's access to regular education and progress towards that vision.

IEPs support a student to achieve their vision first through regular education, with the use of supplementary aids and services (e.g., adapted equipment, modified materials, or additional support from staff); then through regular education being intensified with inclusive special education; and, for some students, through special education that cannot be provided in a regular classroom, even with the use of supplementary aids and services. Each IEP team determines, in light of the student's unique circumstances, the necessary combination of supports to enable the provision of a free appropriate public education (FAPE).

Each school, district, and program must make FAPE available to all students experiencing disability in their jurisdiction. An IEP constitutes the educational agency's guarantee of the provision of FAPE for a student. This guidance seeks to provide information that will support IEP teams in the development of IEPs that enable the provision of FAPE through access to regular education and, when regular education is not sufficient to meet the student's needs, through the provision of necessary special education services.

This guidance is designed to support schools, districts, and programs in meeting their responsibilities under the Individuals with Disabilities Education Act (IDEA) and ORS Chapter 343. **This guidance describes best practices; it is not intended to bind districts. This guidance is not legal advice, nor should it be relied on as legal advice.** If you require legal advice regarding the issues discussed in these guidelines, please consult an attorney.

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### IEP Content Requirements

As the cornerstone of special education, IEPs guide the teaching and learning for students experiencing disability. Complete and specific IEP content requirements are documented at 34 CFR § 300.320 and OAR 581-015-2200. Among other elements included there, each IEP should document deep conversations about:

Topic	Should be Documented in IEP as
The student's and family's vision for the student's life after high school	Secondary transition components, such as age appropriate transition assessment, measurable postsecondary goals, transition services, course of study, measurable annual goals, and special education and related services.
What a student knows, understands, and is able to do at this time	Statements of present levels of academic achievement and functional performance (PLAAFP)
What a student should know, understand, and be able to do in one year's time	Statements of present levels of academic achievement and functional performance (PLAAFP); Measurable annual goals
How the education agency will support the student to master those goals and access the general curriculum	Statements of special education, related services, supplementary aids and services (including accommodations), program modifications, and supports for school personnel to be provided for or on behalf of the student

Once the IEP team has come to consensus on the content of the IEP, the next critical discussion becomes: *in what least restrictive environment (LRE) can that IEP be implemented, special education (SDI and related services) be provided, and access to the general curriculum and FAPE for this student be enabled?*

### Considerations for SDI

In this discussion, it is important to recognize that special education is location-neutral: SDI and related services can and should be provided throughout the continuum of alternative placements. Education in regular classes is general education, which can be made more accessible through the use of supplementary aids and services, including accommodations and modifications. When general education, with the use of supplementary aids and services, cannot sufficiently meet the needs of a student experiencing disability, they may require special education and related services.

The LRE requirements of the IDEA, which will be discussed in further detail below, compel education agencies and IEP teams to plan for special education to occur in regular classes by appropriately licensed personnel, wherever possible, and to remove students from that setting only when the need for special education requires it. While this guidance focuses on SDI, it is important to note that related services are also subject to LRE requirements.

The LRE requirements of the IDEA also give rise to a common refrain in special education: **students experiencing disabilities are general education students first**. Special education is intended to take high quality core

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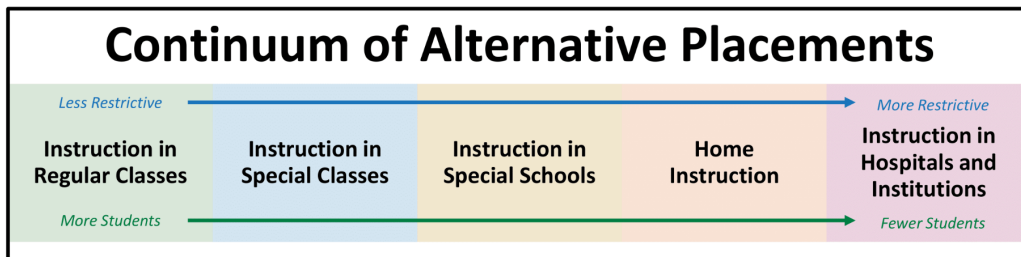
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instruction and make it accessible to students experiencing disabilities. From a practical perspective, this means that when general education can sustainably enable the provision of FAPE and access to the general curriculum, it should. Where it cannot, there is a need for special education, including SDI.

The state of Oregon defines instruction broadly, covering a wide range of activities that support the direction and assessment of learning in various settings (ORS 342.120). ODE further defines instruction to include all activities approved by the student’s resident school district, consistent with Oregon’s academic and career-related learning standards, and designed to lead to student achievement of those standards (OAR 581-023-0006). Congress equally took a broad view of instruction when it reauthorized the Elementary and Secondary Education Act (ESEA) as the Every Student Succeeds Act (ESSA) and defined comprehensive literacy instruction as including “developmentally appropriate, contextually explicit, and systematic instruction, **and frequent practice**” (20 U.S.C. § 6641, **emphasis added**).

### Establishing a Continuum of Alternative Placements

Each LEA is required to “ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services” (34 CFR § 300.115). In order to fulfill the requirement of a continuum of alternative placements, a district must have, at minimum, instruction in regular classes; instruction in special classes; instruction in special schools; home instruction; and instruction in hospitals and institutions.



A student’s placement must be determined in conformity with the LRE provisions established in the IDEA.

### LRE Requirements of the IDEA

Under the IDEA, each local educational agency (LEA) must educate students experiencing disability in the LRE. The restrictiveness of a given setting is determined based on how much they resemble a regular classroom environment (Champaign, 1993; Tagenhorst et al., 2014; Yell et al., 2020, as cited in Yell, Bateman, & Shriner, 2022). Educational placement options only available to students served through IEPs, for instance, are generally considered more restrictive than options available to all students.

Each student’s placement must be determined based on the needs identified in their IEP and must be determined after the IEP has been completed. “When teams decide on the placement prior to completing a student’s IEP, they are engaging in an illegal practice referred to as ‘shoehorning,’ in which a student's program is shoehorned to fit



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to a particular placement” (Tatgenhorst et al., 2014, as cited in Yell, Bateman, & Shriner, 2022, p. 148). The LRE provisions of the IDEA require that, “each public agency must ensure that -

- (i) 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 nondisabled; and
- (ii) 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” (34 CFR § 300.114).

Under the IDEA, each LEA must educate students experiencing disability in the LRE. As a general matter, LRE requires that a school district educate a student experiencing disability in a setting alongside students who do not experience disabilities to the maximum extent appropriate, based on the needs of the student experiencing disability. Thus, a school district must place a student experiencing disability in the regular educational environment — meaning the setting where students who do not experience disabilities participate in academic, nonacademic, and extracurricular services and activities — unless the student’s IEP team reaches an individualized determination that the student’s needs cannot be met satisfactorily in that environment even with individualized supports, including supplementary aids and services. This means it is expected that children are to be removed from the regular class setting **only when** general education and supplementary aids and services are not sufficient to enable their successful education in that setting (i.e., when they need SDI or related services).

Prior to considering more restrictive settings, IEP teams must consider whether the use of supplementary aids and services could enable a student to be educated in lesser restrictive settings. Further, the IDEA explicitly prohibits placement in more restrictive settings solely due to the need for modifications to the curriculum (34 CFR § 300.116(e)). It is inconsistent with the IDEA to educate a child in a segregated space solely to receive instruction through modified curriculum; there must be a need for special education (SDI and/or related services) consistent with their level of removal from the general education environment.

Through its requirements for a continuum of alternative placements, the IDEA establishes parameters for IEP teams to consider the LRE that enables the provision of FAPE for each eligible student.

### **Using a Continuum of Alternative Placements When Making Educational Placement Decisions**

Placement under the IDEA always begins with the general education classroom and moves to more restrictive settings on a public agency’s continuum of alternative placements only when an IEP team determines that the child’s education cannot be achieved satisfactorily in that setting, even with the use of supplementary aids and services. Supplementary aids and services could include, among other examples, preferential seating, counseling services, or the implementation of a behavior intervention plan (BIP) based on a functional behavioral assessment (FBA).

Under the IDEA, children should not be removed from the regular education classroom unless the IEP team determines that it is necessary in order to receive special education and/or related services in light of the child's unique circumstances. Further, it is inappropriate to remove a child from the regular education classroom for reasons unrelated to the provision of special education and related services. Therefore, it can be reasonably expected that the IEP for any child in a segregated placement would require special education and related services be provided to or on behalf of the child commensurate with their level of removal from the general education environment.

ODE recommends the following best practices for teams making educational placement decisions:

- Placement decisions should be determined during the concluding portion of the IEP meeting, after the IEP has been completed. Though placement decisions do not have to be made by the IEP team, the composition of the IEP team typically also covers the required members of the group that makes the placement decision. Under the IDEA, the placement decision must be made by a “group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options” (34 CFR § 300.116(a)(1)).
- IDEA requires that each student's placement is as close as possible to their home, including attending the school they would attend if nondisabled unless their IEP requires some other arrangement. Therefore, every placement decision begins with the team considering how to successfully meet the student's needs in regular classes, including through the use of supplementary aids and services.
- Only when the team has determined that the student's education cannot be achieved satisfactorily in that setting, even with the use of supplementary aids and services, can they move to the next more restrictive setting on the continuum of alternative placements. The least restrictive setting on that continuum in which a student's IEP can be implemented becomes their primary educational placement.
- Once the team has determined a student's primary educational placement, they should consider how to include the student in nonacademic and extracurricular services and activities—including meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, and special interest groups or clubs—to the maximum extent appropriate.

A process by which IEP teams can approach making placement decisions appropriately is documented in [the LRE Decision Tree](#). This decision tree was developed following a review of “federal legislative initiatives and case law that has influenced how schools determine the LRE” (Rozalski, Stewart, & Miller, 2010, p. 152). Additional information about placement for children aged 3-5 is available [here](#). More information about documenting placement decisions is available [here](#).

### **Determining SDI on IEPs**

As noted above, given the LRE provisions in the IDEA, it can be reasonably expected that the IEP for any child in a segregated placement would require special education and related services be provided to or on behalf of the child commensurate with their level of removal from the general education environment. To be clear, thinking about placement and IEPs in this order differs from the placement procedures established by the IDEA. Under the IDEA, the IEP team first develops the IEP and subsequently turns to the placement determination. It would be

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inappropriate to adjust the services on a child's IEP in order to justify a more restrictive placement: the services on a child's IEP must be based on their individual circumstances, which then informs their placement.

However, it is appropriate to review the services and supports on an IEP in order to determine whether a child has been overly segregated in their placement based on the IEP. For instance, if a child has two hours of special education and related services documented in their IEP each week (5% of a 40 hour week), placement in a segregated setting for more than 60% of the week (i.e., <40% included with nondisabled peers) is not consistent with the child's IEP. Again, it is inconsistent with the IDEA to adjust the amount of special education and related services on a child's IEP in order to justify a given placement. Rather, the IEP team would need to reconsider the child's circumstances (e.g., document the present levels of academic achievement and functional performance, develop appropriate measurable annual goals that will enable the child to receive FAPE and access the general education curriculum, determine the services and supports that will enable the child to make progress towards their goals and in the general education curriculum).

ODE expects that IEP teams will take a broad view of instruction and carefully consider the special education (SDI and related services) required to enable the provision of FAPE and access to the general curriculum for each eligible child. SDI includes those elements necessary for students experiencing disabilities to make appropriate progress, including:

- a. Adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the child's disability.
- b. Ensuring access of the student to the general curriculum, so that the students can meet the educational standards within the jurisdiction of the public agency that apply to all children. (34 CFR § 300.39)

Oregon's broad definition of instruction encompasses direct instruction, along with the direction of learning and the practice and assessment of learning. When any of those elements are adapted to meet the unique needs that result from a student's disability, it constitutes SDI. The IDEA mandates the inclusion of SDI in a student's IEP when it is essential for providing FAPE. It also mandates that SDI be provided in conformity with a student's IEP.