

# UPDATE ON THE P.J. SPECIAL EDUCATION LAWSUIT

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*P.J. et al v. State of Connecticut, State Board of Education* (P.J.) stands as one of Connecticut's most significant cases in the area of special education. The 1991 class action lawsuit filed on behalf of mentally retarded/intellectually disabled (MR/ID) students and their families was settled in 2001. The parties reached a legal agreement containing five agreed-upon goals that were developed from mutually-desired outcomes. An expert advisory panel (EAP) was appointed to set target numbers for each goal. The five goals are

1. An increase in the percent of students with mental retardation or intellectual disability who are placed in regular classes, as measured by the federal definition (i.e., 80 percent or more of the school day with nondisabled peers). *Note:* The EAP set a target for school districts that aimed to have 80 percent of the MR/ID students placed in regular classes for 80 percent or more of the school day.
2. A reduction in the disparate identification of students with MR/ID by school district, by racial group, by ethnic group, or by gender group
3. An increase in the mean and median percent of the school day that students with MR/ID spend with nondisabled peers
4. An increase in the percent of students with MR/ID who attend the school they would attend if not disabled (i.e., home school)
5. An increase in the percent of students with MR/ID who participate in school-sponsored extra-curricular activities with nondisabled students

The court retained jurisdiction for five years, ending in August 2007, but would continue to hear arguments by the plaintiff-families for three additional years (until August 2010) if they believe the state has not complied with the agreement. One such motion was filed by the plaintiffs in the spring of 2008 but was denied by the court.

In April 2009, the State Department of Education (SDE) issued a periodic report on its progress toward the P.J. goals and found significant progress in all areas. For example, the percent of Connecticut students with MR/ID who are educated in the regular class (i.e., who spend 80 percent or more of their time with nondisabled peers) increased from 9.1 percent statewide in 1998 to 48.4 per-

cent in 2008. Moreover, the mean percent of time that these children spend with nondisabled peers increased during this same period from 30.7 percent to 70.6 percent.

The SDE report also cites activities in which it has engaged in support of the agreement such as state-wide and individual district professional development, focused discussions with targeted districts' staff, and assigning consultants to work with targeted districts to conduct observations, provide feedback, and develop improvement plans. The SDE also has continued to provide the plaintiffs with information upon request.

Also, in 2008, one of the first post-P.J. decisions was issued in a lawsuit filed by Connecticut parents alleging that a school district did not provide their child with an appropriate program in the least restrictive environment. Specifically, in *P. v. Newington Board of Education*, 546 F.3d 111 (2nd Cir. 2008), the United States Court of Appeals for the Second Circuit rejected the parents' claim and adopted the so-called *Daniel R.R.* test that has been applied in other circuit courts. The *Daniel R.R.* test considers whether "education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily" and whether the school "has mainstreamed the child to the maximum extent appropriate." In the *Newington* case, the parents contended that, as a result of the P.J. settlement agreement, the Court was required to adopt a presumption that a student must be placed in general education with nondisabled peers for 80 percent or more of the school day. The court rejected this argument and held that even though "Connecticut school authorities may have found this [80%] percentage figure useful, we conclude that mandating such a percentage in every case would be inconsistent with the IDEA's directive that schools take an individualized approach to each student." The court further opined that the 80 percent figure is neither "presumptively adequate" nor "presumptively inadequate."

Thus, this case is significant for reaffirming that P.J.'s goal of students being included in regular education 80 percent of the time was a goal, not a mandate, and that each child's Individualized Education Program (IEP) must be developed on a case-by-case basis with that child's own individual needs driving all decisions.

