

Special Education Update

The P.J. case: What does it mean for teachers?

By Robyn Kaplan-Cho, CEA¹



It is one of the most significant special education lawsuits in Connecticut history, and teachers are playing an integral role in its implementation in every school district across the state. So, why have so few teachers been fully informed about the specifics of the P.J. case?

The questions below represent commonly asked questions posed by teachers. The answers are intended to provide CEA members with an understanding of what the P.J. case is, what the settlement agreement actually requires, and how it has been and continues to be implemented by the State Department of Education (SDE).

Q: Who is P.J. and how did this lawsuit get started?

A: P.J. was a student who was enrolled in one of Connecticut's public schools and was the lead plaintiff in a lawsuit filed in 1991 by five school-aged children with mental retardation/intellectual disability (MR/ID) and their families against the Connecticut State Department of Education, the State Commissioner of Education, and certain local school districts. In late 1993, the case was certified as a class action with the class defined as all MR/ID school-aged children in Connecticut who have been identified as needing special education and who, on or after February 20, 1991, are not educated in regular classrooms.

Q: What exactly does “not educated in regular classrooms” mean?

A: The case adopted the U.S. Department of Education definition of “regular class placement”—the students spend 80 percent or more of their time with non-disabled peers—so the case refers to those MR/ID students who do not spend at least 80 percent of their

time with nondisabled peers. It also might be helpful to note that the federal definition of “resource room” placement is that the child spends greater than 40 percent but less than 80 percent of his/her time with nondisabled peers. A child is considered to have a “separate class” placement if he/she spends 40 percent or less of his/her time with nondisabled peers.

Q: Does P.J. apply to just MR/ID students or to all special education students in Connecticut?

A: This specific case addresses only MR/ID students. However, because the federal special education law, the Individuals with Disabilities Education Act (IDEA), requires that all special education students receive a free, appropriate education in the least restrictive environment², the SDE is required to examine the placement decisions for all special education students in Connecticut on an ongoing basis.

Moreover, through its focused monitoring efforts, the SDE is responsible for analyzing student outcomes around all disability categories. It just so happened that during the 2004-05 and 2005-06 school years, one of the key indicators of its focused monitoring effort was regular class placement of all special education students in Connecticut, which involves issues similar to those at the heart of the P.J. case.

Q: Who won the P.J. lawsuit?

A: The parties to the lawsuit entered into an agreement (“settlement agreement”) in 2001 so there was not a winner or loser. However, the plaintiffs were awarded a one-time payment of \$675,000 in attorney's fees and costs, payable to their attorney.

Q: What does the settlement agreement require?

A: Although many teachers were under the impression that the P.J. case set forth certain mandates, this is not true. In fact, the settlement agreement contains five agreed-upon goals that were developed from mutually desired outcomes.

Q: What are the five P.J. goals?

A: 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)
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 extracurricular activities with nondisabled students

Q: How were these goals to be measured?

A: Within 60 days of the court approval of the settlement agreement, the SDE was required to establish statewide and districtwide baseline data established as a result of the December 2001 data collection. Measurement would then be based on improvement from this baseline. The settlement agreement indicates that for goal 1 (regular class placement) and goal 4 (home school), the state would be committed “to achieving meaningful continuous improvement” and “continuous improvement with respect to goals 2, 3 and 5,” annually. The state collects data from all districts in December of each year for this purpose.

Q: Who would decide if the goals were met?

A: The settlement agreement also required the creation of an expert advisory panel (EAP) to advise the parties and the court and to serve as a resource to the SDE with respect to the implementation of the settlement agreement and to facilitate the SDE’s compliance with the agreement. The EAP also was required to provide annual written comment to the court and to

make recommendations related to the progress the SDE has made toward these five goals. Finally, the court retained jurisdiction for up to eight years to consider any future claims of non-compliance made by the plaintiffs.

Q: What was the SDE’s position on the education of students with disabilities?

A: The SDE issued a policy statement and memorandum that were sent to every school district in Connecticut. The statement reiterated the intent of IDEA to educate all students in the least restrictive environment. Moreover, the memorandum repeated the requirement that each student’s needs must be considered individually by the planning and placement team (PPT).

Q: Did the P.J. settlement agreement force school districts to bring back all students who were placed out of their district?

A: No, the fourth goal seeks to increase the percent of students attending their home school but does not require that every student attend his/her home school. That decision, as always, must be made by the PPT.

Q: Does P.J. mean that there can no longer be self-contained special education classrooms?

A: Absolutely not. IDEA continues to require that districts offer a continuum of placement options. So, if a PPT determines that a student requires placement in a self-contained classroom, then the district must provide one.

Specifically, IDEA regulations require that each school district ensure that

“a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.” These regulations go on to state that the continuum must include those alternative placements cited in the definitional section of the regulations such as “regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions.” Moreover, the regulations provide that the continuum must “make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement” 34 C.F.R. 300.115(b). Finally, in the Comment to the final

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regulations for IDEA 2004, the U.S. Department of Education clearly states that “placement decisions must be based on the individual needs of each child with a disability. [School districts], therefore, must not make placement decisions based on a public agency’s needs or available resources, including budgetary considerations and the ability of the public agency to hire and recruit qualified staff.”

Q: But isn’t the reality that many more special education students are being moved into regular classrooms?

A: The P.J. case has caused the SDE to increase its oversight (reviewing data, conducting on-site visits and observations) of the inclusion practices of all school districts in Connecticut, not just the targeted ones. As a result, many districts have reacted by changing the placements of special education students, particularly MR/ID students. However, these districts still are bound by IDEA, and all changes to a child’s placement must occur through the PPT process. The SDE has provided training and guidance to school personnel and parents to help PPT members be more knowledgeable and skilled in educating students appropriately in regular classrooms, so that well-informed decisions about placement are being made by PPT members.

Q: What’s the significance of the 80 percent figure?

A: That percentage stems from the EAP, which has put certain targets on the P.J. goals. The 80 percent figure applies in two different ways. Specifically, it relates to goal 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] and aims to have 80 percent of the MR/ID students be placed in regular education classes for 80 percent or more of the day by 2007. At an elementary school this means 80 percent of the MR/ID students would spend about 5 to 6 hours of the school day in a regular class. For buildings that have periods, like middle and high schools, this would mean that about 80 percent of the MR/ID students would spend about 6 to 7 periods of the school day in a regular class.

Q: What are those multicolored maps about?

A: Those maps actually relate to the focused monitoring efforts described previously, as well as the P.J. case. For the past two years, the SDE issued color-

coded maps that identified districts according to their progress with the goals of the P.J. case. Other maps that were part of focused monitoring addressed progress of districts for all students with disabilities, including preschool-aged students. One tracked overrepresentation in special education due to race/ethnicity; another was the mean time students with disabilities spent in regular education classrooms; and a third was on placement in separate classes, as measured by the federal definitions (i.e., less than 40 percent of the school day with nondisabled peers)—some districts were colored red indicating “an area of significant concern”, districts with “an area of concern” were colored yellow and those demonstrating “strong performance in the area identified” were colored green.

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Q: If the majority of students in a regular education class are special education students, is it still a regular education class? In other words, exactly what constitutes a regular education class?

A: The SDE issued a memorandum on December 18, 2002, that addressed this issue. It advises that when determining a student’s time

with nondisabled peers (TWNDP), teachers should use a look-around rule—that is, when in the setting, look around to see whether special education students are being educated with students without disabilities. The memorandum further stated that a regular education classroom would have the following characteristics:

- Taught by a regular education teacher
- Is identified in the course catalog as a general education class
- Contains a substantial number of non-disabled students

It further clarified that TWNDP is different from hours of special education instruction since it is possible for a special education student to spend 100 percent of his/her time receiving special education instruction in a regular education classroom where the same 100 percent of his/her time is spent with nondisabled peers. So, a co-taught class with a substantial number of special education students can be a regular education classroom. However, it is the expectation of the SDE that no more than 50 percent of the students in the class be disabled for this to count as time with non-disabled peers. The SDE listed examples of cases where a setting would not constitute a regular education classroom:

IDEA continues to require that districts offer a continuum of placement options.

- An art class taught by the art teacher where the students in the class are all special education students from the school's self-contained classroom
- A special education resource room
- A special education classroom where nondisabled peers visit and/or peer-tutor special education students regularly.

Q: Is help available for teachers who feel that they need additional training to better equip themselves to work with special education students in the regular classroom?

A: Absolutely. School districts can incorporate training related to working with special education students into their professional development offerings. Also, the State (formerly Special) Education Resource Center (SERC) provides extensive training statewide on educating special education students in the least restrictive environment. Additionally, the University of Connecticut in Farmington has been funded by the state to provide training to school personnel on educating special education students, specifically those students with more significant disabilities in the general education classroom. Finally, CEA offers workshops designed to educate teachers about their legal rights and responsibilities when working with special education students.

Q: This past spring, individuals from the State Department of Education observed classrooms in my school. Was this related to the P.J. case?

A: Yes, in the spring of 2006, the SDE began its "walk through protocol" that is intended to allow it to gather information on various aggregate trends across the state and also to evaluate the quality of instruction delivered to ID/MR students (i.e., the class action members of P.J.) in schools across the state. Approximately 2,900 identified ID/MR students are members of this class-action, and the SDE plans to observe each of the students in his/her school for about 10 minutes. The goal is to determine whether there is sufficient evidence, using a simple positive or negative rating, that certain predetermined factors (e.g., the appropriate use of paraprofessional) are being met. The SDE was able to observe approximately 300 in the spring and plans to observe the remaining 2,600 class members during the 2006-07 school year. Also, the SDE, as required by the settlement agreement, has given representatives of the P.J. plaintiffs access to individual student data from all school districts across Connecticut dating back several years so the plaintiffs can draw their own conclusions as to whether (or not) the SDE has ensured compliance with the settlement agreement. ■

¹ The Connecticut State Department of Education reviewed and provided input for this article.

² The IDEA regulations requires each school district to ensure:

- (1) That to the maximum extent appropriate, students with disabilities, even those in public or private schools or care facilities, are educated with students who are nondisabled; and
- (2) That special classes, separate schooling, or other removal of students 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 service cannot be satisfactorily achieved. (34 C.F.R. 300.114(a)(2)(i)).



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