

**Frequently Asked Questions  
on the Inclusion Settlement  
in  
*Disability Rights New Jersey v. New Jersey Department of Education***

**Q1: Who was involved in filing the lawsuit challenging New Jersey’s over-segregation of preschoolers, school-age students, and students of color, with disabilities?**

**A1:** The “plaintiffs” in the lawsuit included the Arc of New Jersey, Disability Rights New Jersey, the Education Law Center, and the Statewide Parent Advocacy Network. The attorneys for the plaintiffs included Disability Rights New Jersey; the Education Law Center; Freeman, Carolla, Reisman, and Gran; Lowenstein Sandler; and Todd Wilson, LLC.

**Q2: Why was the lawsuit filed?**

**A2:** The lawsuit was filed because of New Jersey’s poor performance in the area of “least restrictive environment” (LRE). New Jersey’s data was well below the national average for students with disabilities included in the general education classroom 80% or more of the school day, and New Jersey had the highest rate of out-of-district placement in the country -- three times the national average. At the time of the lawsuit, over 85% of all preschoolers were in segregated settings.

In addition, there was significant disproportionate representation of students of color in the most segregated settings. Students of color struggling in the classroom were far more likely than white students with similar academic and behavioral performance to be identified as having a disability; identified as having cognitive/intellectual or emotional disabilities (disabilities that have the highest rates of segregation); and placed in a self-contained class. Advocates sought to influence the New Jersey Department of Education (NJDOE) to improve inclusion practices through participation in the State Performance Report and Annual Performance Report goal-setting and improvement activities, and via multiple other advocacy efforts, including meetings with the NJDOE seeking agreement on needed improvement steps. When those efforts proved unsuccessful, the lawsuit was filed.

**Q3: When was the lawsuit filed?**

**A3:** The lawsuit was filed by the Plaintiffs in federal district court in 2007. The State filed motions to dismiss the lawsuit, claiming that the plaintiffs had not “exhausted administrative remedies,” and did not have “standing” to bring the lawsuit. The judge denied the motions and allowed the case to proceed in 2008-2009. The State appealed, but the United States Court of Appeals for the Third Circuit denied the appeal. After this decision, the plaintiffs moved forward with “discovery” efforts, which included a review of student records, parent surveys, consultation with experts, and multiple depositions, leading to a renewal of discussions between the plaintiffs and the State. Intensive settlement discussions began in 2012, and the settlement was signed in February, 2014.

**Q4: What were the allegations in the lawsuit?**

**A4:** The plaintiffs alleged that:

- ▶ The NJDOE failed to ensure that all students with disabilities, including preschoolers, school-age students, and students of color, were provided a free, appropriate public education (FAPE) in the least restrictive environment and included in the general education classroom to the maximum extent appropriate
- ▶ Children with disabilities were inappropriately and unnecessarily sent to self-contained or more restrictive settings, including out of district
- ▶ Children with disabilities were being denied in-class aids, services, and accommodations needed to succeed in the general education classroom
- ▶ Students with disabilities were being disproportionately assigned to basements and other less desirable classroom locations.

**Q5: What is inclusion?**

**A5:** Education of children with disabilities in general education classes with supplementary aids and services is often termed “inclusion.” “Inclusion” today differs from the once synonymous “mainstreaming,” which now refers to merely placing a student with a disability in a general education classroom without modification or support and requiring the student to meet the same curricular expectations as the students without disabilities in the class.

**Q6: Why is inclusion so important for students with disabilities?**

**A6:** Decades of research demonstrate that students with disabilities, including students with significant cognitive disabilities and autism, benefit from inclusion. Preschoolers with disabilities develop greater speech, physical and social skills, and academic knowledge through interaction with non-disabled peers than in segregated settings. Interaction with typically developing peers is more effective in improving communication skills than one-on-one speech therapy provided in segregated settings. For students with disabilities of all ages, being in an inclusive setting leads to:

- ▶ Higher expectations by parents and educators
- ▶ Improved access to the general curriculum
- ▶ Improved language and reading skills
- ▶ Higher grades
- ▶ Higher scores on standardized tests
- ▶ Larger friendship networks
- ▶ Improved attendance
- ▶ Greater self-esteem
- ▶ Higher rates of graduation
- ▶ Higher rates of employment and post-secondary education enrollment

**Q7: What is the impact of inclusion on students without disabilities?**

**A7:** Studies show that students without disabilities in inclusive settings demonstrate significant social and developmental benefits, including improved understanding of and relationships with children with disabilities. Studies also show that there is no negative impact on academics for students without disabilities by having students with disabilities in their classroom, and some studies even show greater performance in reading and math.

**Q8: What is included in the settlement?**

**A8:** The settlement targets 76 districts for needs assessment, intervention and monitoring. It includes a process for identifying needs in the targeted districts, for providing training and technical assistance (TA), and for monitoring the results of the training and assistance.

Needs will be identified using an assessment tool created collaboratively by NJDOE and the Plaintiffs. NJDOE will use the information from the needs assessment tool to develop a Training and Technical Assistance Plan for each targeted district. The written results of the needs assessments and a written summary of patterns of need across the districts will be shared with the Stakeholder Committee established in the Settlement Agreement. The NJDOE must consider the feedback from the Stakeholder Committee and implement its recommendations as appropriate. NJDOE must also share the draft Training and Technical Assistance Plans with the Stakeholder Committee for their review.

NJDOE must make available to each targeted district “State Inclusion Facilitators” who are NJDOE employees with training in inclusive practices and who have experience in providing training and TA on inclusion/LRE. The State Inclusion Facilitators must reach out to each district at least monthly to offer assistance, including on-site assistance if appropriate, regarding LRE. NJDOE must provide on-site assistance to each designated district that requests it, up to a combined total of five on-site visits multiplied by the number of compliant districts.

The settlement also includes mandatory training for NJDOE’s complaint investigators on LRE by an independent, national LRE expert named in the settlement, before the 2015-2016 school year.

**Q9: Which districts are affected by the settlement?**

**A9:** The settlement includes 76 districts in 18 counties: 45 are included because of their problems with preschool inclusion (of which four have already been determined “non-compliant” in prior NJDOE LRE monitoring); 38 are included because of their problems with school-age inclusion (of which eight are “non-compliant”); and 10 are included because of their problems with “disproportionality” in inclusion – failure to include students with disabilities of color at higher rates than their failure to include students with disabilities who are white. Three

districts (East Windsor Regional, Newark, and Trenton) are included in all three categories. Eleven districts are included in two categories. At least one district in every county is targeted except for Hunterdon, Sussex and Warren Counties. The targeted districts represent 25-30% of all students with disabilities in New Jersey.

**Q10: What is the timeline for the settlement activities?**

**A10:** The chart below sets out the timeline for the different components of the settlement.

<b>Date</b>	<b>Activity</b>
9/2014-12/31/2014	LRE Needs Assessment across the 76 targeted districts
By 1/15/2015	NJDOE develops written results and written summary of patterns of need and shares with Stakeholder Committee
Within 21 days of above	NJDOE holds meeting with Stakeholder Committee for feedback
By 3/15/2015	NJDOE provides draft Annual Training and TA Plan to Stakeholders, including topic for annual webinar
Starting on 7/15/15	NJDOE provides at least four training/TA sessions, of at least three hours each, to each targeted district for each of three consecutive years. A “Professional Development Evaluation” is administered to each individual participant at end of each training and TA session; results shared with Stakeholder Committee within 30 days
By 7/2015	NJDOE directs each non-compliant district to designate at least one teacher, CST member, or administrator, who is knowledgeable about LRE, to be a resource person for, and provide TA to, other district staff regarding LRE during Settlement period. District may contract with experienced LRE/ inclusion expert to serve in this role
By 9/1/2015	NJDOE contracts with designated independent LRE expert to provide full day of mandatory LRE training for NJDOE complaint investigators
10/2015-2/2016	NJDOE monitors each identified district to determine LRE compliance. Mandatory training and inclusion facilitators required for non-compliant districts. NJDOE provides copy of draft LRE Monitoring Reports to Stakeholder Committee
Within 21 days of above	NJDOE meets with Stakeholder Committee for feedback
By 6/15/16 and 6/15/17	NJDOE provides Year 2 and 3 Training and TA Plans to Stakeholder Committee
10/2016-2/2017	NJDOE monitors each identified district to determine LRE compliance; NJDOE provides copy of draft LRE Monitoring Reports to Stakeholder Committee
Within 21 days of above	NJDOE meets with Stakeholder Committee for feedback

Conclusion of Year 3	NJDOE completes final monitoring; provides Stakeholder Committee with final LRE Monitoring Reports within 10 days of issuance; settlement in concluded with submission of final LRE Monitoring Reports
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**Q11: What are the topics for the training and technical assistance?**

**A11:** The topics for the training and TA include:

- ▶ Strategies to develop contracts with preschools serving children without disabilities
- ▶ Providing support in typical early childhood settings
- ▶ Inclusive school climate
- ▶ Analyzing data
- ▶ Universal Design for Learning and Model Curriculum Scaffolds
- ▶ Modified curricula
- ▶ Differentiated instruction
- ▶ Supplemental aids and services
- ▶ Adapted curriculum, instruction, materials
- ▶ Co-teaching models
- ▶ Use of itinerant providers
- ▶ Transportation
- ▶ Facilities planning
- ▶ Design and implementation of appropriate policies and programs
- ▶ General education supports
- ▶ Design and implementation of appropriate policies and programs focused on:
  - Cultural/racial/ethnic awareness, culturally-responsive education, and culturally-competent and non-discriminatory evaluations
  - Intersection of patterns of race, disability, and Limited English Proficiency
  - Strategies to address disproportionate placement in more segregated settings.

**Q12: How will the training and technical assistance be evaluated?**

**A12:** The training and TA will be evaluated in several ways. First, a Professional Development Evaluation will be administered to each individual participant at the end of each training and TA session; the results must be shared with the Stakeholder Committee within 30 days. In addition, NJDOE must assess the implementation and effectiveness of each Annual Training and TA Plan through:

- ▶ Classroom observations
- ▶ Review of individual IEPs and other student records
- ▶ Review of placement data including race/ethnicity
- ▶ Review of district procedures
- ▶ Interviews of staff and parents using the collaboratively developed mandated tool
- ▶ Possible review of lesson presentation and co-teaching methods

**Q13: What parent involvement is required in the settlement?**

**A13:** NJDOE must contact each district Special Education Parent Advisory Group (SEPAG) prior to each district monitoring to offer to talk with a random sampling of 20 parents of students representing a variety of placements, disabilities, racial/ethnic groups, and grades. In addition, the SEPAG members must be invited to attend at least one training in each district each year. The Stakeholder Committee must also be invited to attend this training.

**Q14: Who is on the stakeholder committee?**

**A14:** The Stakeholder Committee includes:

- ▶ Mary Ciccone, Disability Rights New Jersey
- ▶ Sue Gottesman, NJ Council on Developmental Disabilities
- ▶ Debra Jennings, Statewide Parent Advocacy Network (SPAN)
- ▶ Paula Lieb, NJ Coalition for Inclusive Education
- ▶ Jerry Petroff, The College of New Jersey
- ▶ Renay Zamloot, Advocate

**Q15: What is the role of the Stakeholder Committee?**

**A15:** The Stakeholder Committee reviews the draft LRE Needs Assessments and written summary of patterns of need; draft monitoring reports and placement data; draft Annual Training and TA Plans and webinar topics; and evaluations of each LRE training and TA session. The Committee provides recommendations on areas of need and proposed annual Training and TA Plans and webinar topics, and can attend the LRE trainings to which SEPAGs are invited.

**Q16: How can I help?**

**A16:** If you live in one of the targeted districts:

- ▶ Share information about the settlement with parents and professionals
- ▶ Go to school board meetings and SEPAG meetings to ask questions about implementation. If your district doesn't have a SEPAG, contact SPAN for help in getting one started.
- ▶ Encourage parents to participate in focus groups during state monitoring, and/or find other ways to share information with the NJDOE monitors.
- ▶ Review your district's Training and TA Plan and discuss its progress with the SEPAG, district administrators, and the school board.
- ▶ Informally monitor implementation; share concerns with the Stakeholder Committee and Plaintiffs, as well as with your local board of education, superintendent, director of special services, and other administrators and educators.

If you live in another district:

- ▶ Share information about the settlement with parents and professionals
- ▶ Review the LRE Needs Assessment and monitoring tools; share with your school board, superintendent, principal, SEPAG, and others for possible use in your district. If your district doesn't have a SEPAG, contact SPAN for help in getting one started.
- ▶ Monitor your district's LRE data and activities; share concerns with the Stakeholder Committee and Plaintiffs, as well as with your local board of education, superintendent, director of special services, and other administrators and educators.

**Q17: How can I reach the Plaintiffs for more information?**

**A17:** You can reach the plaintiffs by contacting the following individuals:

- ▶ Disability Rights New Jersey: Joseph Young, Mary Ciccone or Ruth Lowenkron, 609-292-9742
- ▶ Education Law Center: Elizabeth Athos, 973-624-1815, ex. 20
- ▶ Statewide Parent Advocacy Network (SPAN): Diana Autin or Debra Jennings, 973-642-8100, ex. 105 or ex.106
- ▶ The Arc of New Jersey: Tom Baffuto, 732-246-2525