
LEAST RESTRICTIVE ENVIRONMENT, METAPHYSICS, AND STUDENTS WITH INTELLECTUAL DISABILITIES

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The Individuals with Disabilities Education Improvement Act (2004) (IDEIA) requires practitioners to use educational evaluations to assess students in K-12 schools that are suspected of having a disability. The resulting data provides the basis for determining whether students qualify for special education services, their precise educational needs, and the most appropriate plan to address those needs. This process culminates in the development of an Individualized Education Program (IEP) and determining the least restrictive environment (LRE) in which to implement it.

The Office of Special Education Programs (OSEP) submits an annual report to Congress detailing special education service statistics. The most recent report (2021) showed that students with intellectual disabilities (SwID) had significantly less access to general education classrooms in comparison to other student populations. Furthermore, recent empirical scholarship shows that SwID demonstrate better learning and developmental outcomes when provided greater access to general education classrooms. These points suggest that despite being designed to provide access to appropriate education services, the IDEIA seems to achieve the opposite in practice by limiting SwID to accessing educational resources that confer less educational benefit.

This problem is produced by a liberal conception of the student (LCS) implicit within the IDEIA that establishes two truths that govern the determination of LRE for SwID. The first truth frames the student as a socially atomistic and rational being. The second truth frames the student as fully accessible to educational evaluations that measure individualized and rational forms of knowledge demonstration. Together, the LCS and the two truths that it establishes posit a metaphysics of the student that grounds the value of educational evaluations and legitimates their use for determining LRE.¹ As a result, SwID are provided less access to general education classrooms and their associated learning and developmental benefits. My analysis below will draw on select ontological themes in the work of American philosopher and educator John Dewey in arguing that a revised conception of the student may resolve this problem by altering criteria that IEP teams consider when determining LRE.

HISTORICAL AND LEGAL CONTEXT

The exclusion of SwID in American public education dates back to at least the mid-nineteenth century. During this time public education systems were

¹ The term metaphysics designates the character of the LCS as a concept that is both a priori and external to the educational processes that it governs.

beginning to take shape and the organization of students according to ability was an important early institutional concern.² For example, many school systems began organizing students by chronological age,³ as well as instituting separate schools and classes for children with mental retardation.⁴

For my purposes, the early history of American public education demonstrates two key points. First, public education systems and the exclusion of SwID developed in tandem. Historical evidence shows that institutional actors have long supported the exclusion of SwID both from and within public schools. Indeed, questions about whether SwID could benefit from instruction, how their presence might affect the learning of students without disabilities, and how their learning needs could burden teachers have often been raised to support separate placements.⁵ Early special education laws were often selectively enforced by school administrators,⁶ or were undermined by court rulings that supported the right of states to deny access to public education services.⁷ Second, the value and use of educational evaluations for the purposes of identifying and placing SwID in separate special education settings has been standard practice for well over a century. Specifically, intelligence tests have historically been used to justify the placement of SwID in separate classrooms. As early as 1913, Stanford-Binet intelligence tests accounted for 72 percent of all special education assessments, and over half of trained examiners were special education teachers.⁸ This history reveals that legal and educational mechanisms have traditionally been used to restrict access of SwID to general education resources and their associated benefits.

The IDEIA was one of two federal laws passed during the 1970s that established legal protections for children with disabilities ages 3-21. The right to receive a free and appropriate public education (FAPE) regardless of disability status is the central substantive right established by the IDEIA.⁹ The provision of FAPE is implemented through a student's IEP and the associated evaluation process, which comprises the central procedural right established by the IDEIA.¹⁰ A vital part of IEP development is the determination of LRE that allows students with disabilities to be educated alongside their peers "to the maximum extent appropriate."¹¹ Determining the LRE requires IEP teams to identify the location(s) where special education services will be provided, identify the

² Robert Osgood, *History of Inclusion in the United States* (Washington, DC: Gallaudet Press, 2005), 23.

³ Osgood, *History*, 23.

⁴ James Trent, *Inventing the Feeble Mind* (New York, NY: Oxford University Press, 2017), 140.

⁵ Osgood, *History*, 23, 27-30.

⁶ Trent, *Inventing*, 142.

⁷ Mitchell Yell, *Law and Special Education* (New York, NY: Pearson, 2019), 37-38.

⁸ Trent, *Inventing*, 154.

⁹ IDEIA, § 1400 (d)(1)(a).

¹⁰ IDEIA, § 1412 (a)(4).

¹¹ IDEIA, § 1412 (a)(5)(A).

supplementary aids and services to be used, and explain why the student will not be included in general education settings for any portion of the school day.¹²

The LRE concept establishes the presumptive right of students with disabilities to be educated alongside students without disabilities.¹³ Furthermore, it establishes the expectation that public schools make good faith efforts to educate students with disabilities in general education settings through the use of supplementary aids and services.¹⁴ The LRE may be best viewed as a constellation of factors rather than a firmly defined concept or outline that enhances flexibility for IEP teams when determining the best educational settings for supporting a child's educational needs.¹⁵

For my purposes, the IDEIA requires that an individualized evaluation of the student and an in-depth consideration of the resulting data by an IEP team must occur before and principally inform the LRE determination.¹⁶ Put plainly, the educational needs of the child must be determined on the basis of empirical data generated through the use of educational evaluations. As such, the LRE concept and the educational decision-making process more broadly is predicated on a presumed value and use of educational evaluations to inform these decisions.

ENGAGEMENT WITH THE PROBLEM

The IDEIA has undoubtedly improved educational access and benefits for children with disabilities. OSEP reported that nearly 6.5 million children with disabilities received special education services in public schools during the 2018–19 school year, including nearly 421,000 SwID ages 6–21.¹⁷ Despite that improvement, statistics detailing where children with disabilities receive instruction during the school day suggest that SwID are less included than it may appear. During the 2018–19 SY, 48.7 percent of SwID were included in general education settings for less than 40 percent of the school day (highest disability category), with an additional 27.9 percent of SwID being included between 40–79 percent of the school day (highest disability category).¹⁸ Only 16.6 percent of SwID were included in general education settings for at least 80 percent of the school day (second lowest disability category).¹⁹ Notably, these statistics do not distinguish between the inclusion of SwID in academic and nonacademic

¹² IDEIA, § 1414 (d)(1)(A)(IV)(cc) and (V).

¹³ Jean Crockett, "Inclusion as Idea and Its Justification in Law," in *On Educational Inclusion*, ed. James Kauffman (New York, NY: Routledge, 2020): 32–33.

¹⁴ Michael Wehmeyer, Karrie Shogren, and Jennifer Kurth, "State of Inclusion," *Journal of Policy and Practice in Intellectual Disabilities* 18, no. 1 (March 2021): 37.

¹⁵ Crockett, "Inclusion," 30.

¹⁶ Adrienne Woods, Yangyang Wang, and Paul L. Morgan, "Disproportionality and Inclusion," in *On Educational Inclusion*, ed. James Kauffman (New York, NY: Routledge, 2020): 108.

¹⁷ Office of Special Education Programs (OSEP), *43rd Annual Report to Congress*, xxiv.

¹⁸ OSEP, 57.

¹⁹ OSEP, 57.

settings. In a study reviewing 88 IEPs, Kurth et al. found that nearly 60 percent of the time during which students with low-incidence disabilities were included in general education settings occurred during nonacademic activities.²⁰ Together, these figures show that SwID have significantly less access to general education resources in comparison to other student populations.

Recent empirical studies have shown that the access differential described above can also negatively affect aspects of the learning and development of SwID. Ryndak has argued that separate special education settings are unable to replicate aspects of the general education setting that are invaluable to the academic and social development of SwID.²¹ Studies comparing the effects of inclusive and separate placements on SwID have shown that increased access to general education settings and services is positively associated with better learning and developmental outcomes.²² Meta-analyses of empirical studies conducted by Carlberg and Kavale, Wang and Baker, and Oh-Young and Filler have reported that students with disabilities in more inclusive settings significantly outperform those in separate settings on academic and social measures.²³ Hehir et al. summarize the empirical research on the inclusion of SwID in writing, “There is clear and consistent evidence that inclusive educational settings can confer substantial short- and long-term benefits for students with and without disabilities.”²⁴

The empirical problem demonstrated above is rather straightforward. SwID receive far less access to general education resources than other student populations. That access differential is not illegal or even unintended under the IDEIA, which does not guarantee equal access to specific educational resources,²⁵ but rather guarantees access to appropriate educational resources in accordance with the IEP.²⁶ The empirical findings described above show that increased access to general education settings facilitates better learning outcomes

²⁰ This term predominately refers to students with intellectual and multiple disabilities; Jennifer Kurth et al., “Considerations in Placement Decisions,” *Research and Practice for Persons with Severe Disabilities* 44, no. 1 (2019): 14.

²¹ Diane Ryndak, “Foreword,” in *Academic Instruction for Students with Moderate and Severe Intellectual Disabilities*, June Downing (Thousand Oaks, CA: Corwin, 2010): ix-x.

²² See Martin Agran et al., “Why Aren’t Students with Severe Disabilities Being Placed in General Education Classrooms,” *Research and Practice for Persons with Severe Disabilities* 45, no. 1 (2019): 5.

²³ Conrad Oh-Young and John Filler, “A Meta-Analysis of the Effects of Placement on Academic and Social Skill Outcomes,” *Research in Developmental Disabilities* 47 (2015): 90.

²⁴ Thomas Hehir et al., *A Summary of the Evidence on Inclusive Education* (Cambridge, MA: Abt Associates, 2016), 2.

²⁵ Meghan Cosier et al., “Placement of Students with Extensive Support Needs,” *International Electronic Journal of Elementary Education* 12, no. 3 (January 2020): 249.

²⁶ IDEIA, § 1400 (d)(1)(a); IDEIA, § 1401 (9)(A-D).

for SwID, as well as improved access to vital developmental opportunities. These circumstances suggest that SwID do not receive access to the most appropriate educational resources to support their needs, but rather are restricted to accessing settings and services that confer diminished benefit in comparison to other student populations. Furthermore, it raises important questions regarding how access is distributed to this population.

John Dewey argued over a century ago in *Democracy and Education* that the way the student and their immaturity is conceptualized was an important point of departure for public education.²⁷ The immaturity of the student, for Dewey, was the fundamental condition of growth through education, and schools mistakenly interpreted this status comparatively with adulthood rather than intrinsically as a positive power of development.²⁸ This (mis)conceptualization of the student serves to establish the fully functional adult as “an ideal and static end” that informs both the meaning of educational progress and the goal of public education.²⁹ By contrast, Dewey argued that educational growth is not something done to the student in the sense of “pouring knowledge into a mental and moral hole which awaits filling,” but rather it is something the student actively and positively does.³⁰ Notably, the value of any conception of the student, for Dewey, lies in its effects on educational processes and outcomes experienced by real students.³¹ As such, he was concerned with the negative effects that this (mis)conception of the student carried for real students because the former functioned to deny important material features of the latter, such as students’ agency, capacities, interests, and goals. For my purposes, Dewey’s position suggests that educational practices can be understood as a response to a prior conception of the student, and effectively changing the former requires a prior revision to the latter. Using Dewey’s position as a point of departure, I will argue that there is an LCS that is implicit within the IDEIA that establishes two truths that govern LRE determinations that negatively affect SwID, thereby demonstrating the need to retheorize this conception of the student to expand access to general education resources for this population.

THE LCS AND SWID

The American legal tradition is rooted in the liberal philosophical and political tradition that traces back to Enlightenment values and principles that includes the priority of rationality and a belief in the unitary subject.³² For my purposes, the liberal tradition establishes three interrelated ontological claims

²⁷ John Dewey, “Democracy and Education,” in *The Middle Works of John Dewey Volume 9*, ed. Jo Ann Boydston (Carbondale, IL: Southern Illinois University Press), 46.

²⁸ Dewey, “Democracy,” 46/56.

²⁹ Dewey, 48.

³⁰ Dewey, 48/57.

³¹ Scot Danforth, “John Dewey’s Contributions to an Educational Philosophy of Intellectual Disability,” *Educational Theory* 58, no. 1 (2008): 58.

³² Rosi Braidotti, *The Posthuman* (Malden, MA: Polity Press, 2013), 13, 29, 31.

about the individual. First, the individual is prioritized in relation to various levels of social context such as the family, geographic or ideological communities, and the governmental state. This claim is clearly expressed in the classical liberal concepts of self-sovereignty, rational self-interest, and individual liberty,³³ as well as deontological forms of liberalism that posit the individual prior to its circumstances and chosen ends.³⁴ Second, rationality is established as the defining characteristic of the individual. This view can be traced back to the Greek tradition and is central to contemporary liberal theory that characterizes the individual as a rational agent defined by its “powers of reason, thought, and judgment.”³⁵ Third, the individual is accessible to the methods of empirical science because the rational processes that characterize it manifest in their self-directed actions in the world. That is, the rationality of the agent is taken to be externalizable and therefore accessible to empirical methods. These ontological claims produce a conceptualization of the individual as a socially atomistic and rational being whose essential and defining features are accessible to empirical methods of measurement.

The IDEIA participates in the liberal philosophical and political tradition and so expresses a conception of the student in alignment with the conceptual features described above. Specifically, an LCS is implicit in the IDEIA that establishes two truths that are discernible in the value and use of educational evaluations that govern LRE decisions. The first truth frames the student as an atomistic and rational being. This point is observable in how practitioners are required to evaluate students under the IDEIA. An eligibility team must develop an individualized battery of educational evaluations that assesses the student across academic and adaptive domains,³⁶ which measure individualized and rational forms of knowledge demonstration. The second truth holds that the student, defined by their atomism and rationality, is accessible to educational evaluations that purport to measure precisely those features of human learning and development. The IDEIA requires that all aspects of the special education process be principally informed by empirical evaluation data. As such, all institutional processes beginning with the eligibility determination through the LRE determination are predicated on the use of educational evaluations. Both truths are established through the implicit function of the LCS in the IDEIA, which serves to posit the student as the kind of being that corresponds to what educational evaluations purport to access and measure. As a result, the LCS grounds the value and use of educational evaluations and the foundation for making LRE determinations.

³³ G. H. Smith, *The System of Liberty* (New York, NY: Cambridge University Press, 2013), 1-2.

³⁴ The works of Kant and Rawls are most commonly associated with this position.

³⁵ John Rawls, “Justice as Fairness,” in *Communitarianism and Individualism*, ed. Shlomo Avineri and Avner de-Shalit (New York, NY: Oxford University Press, 1992), 197.

³⁶ Yell, *Law and Special Education*, 201.

The LCS potentially carries broad implications for all students with disabilities, and I will briefly discuss three here. First, the LCS establishes which aspects of student learning and development matter for understanding educational progress and for determining if and to what extent it has occurred. Second, the LCS establishes which factors are most important for educational decision-making and specifically for distributing access to the most appropriate educational resources to support students' educational needs. Third, the LCS establishes the meaning of civil rights for students with disabilities (FAPE), as well as how practitioners ought to ensure them in educational practices. Notably, students may be affected differently by the LCS because their unique educational needs and disability characteristics may be evaluated differently against the priorities that it establishes that govern the special education process.

Here I will return to my discussion of SwID because I believe this population represents a quintessential example of the negative effects that the LCS carries for LRE determinations. Educational evaluations reward precisely the skills of independent functioning and instrumental rationality that SwID often struggle to demonstrate. That is, the priorities toward individualized, rational, and empirically measurable abilities that educational evaluations reflect overlap with the areas of weakness that often characterize the educational needs of this population. Furthermore, these priorities serve to minimize or omit important areas of student learning and development that are not easily accessible using educational evaluations, such as aspects of social, affective, and vocational areas. Both points can plausibly explain why SwID are more likely to be placed in separate special education classrooms in comparison to other student populations.³⁷ More significantly, they suggest that LRE determinations are predicated on educational evaluations that function to reduce the access that SwID have to general education resources. Put plainly, the IDEIA resists the inclusion of SwID because of the role of the LCS in making educational evaluations the foundation for making LRE decisions. This conclusion seems to render the prospect of educational inclusion for SwID almost oxymoronic, as well as indicate the need to retheorize how the student is conceptualized within the law.

DEWEY, RETHEORIZING THE LCS, AND POSSIBLE IMPLICATIONS

Dewey's work offers some resources for retheorizing the LCS in ways that could alter the value and use of educational evaluations for making LRE determinations for SwID. His general project of reconstruction included an attempt to retheorize the metaphysics of the self that he viewed as quintessentially expressed in the works of Descartes and Kant. Against these positions, Dewey argued that the self was misunderstood when taken as "something already made" or "something given" that exists in total beyond the

³⁷ Mary E. Morningstar, Jennifer A. Kurth, and Paul E. Johnson, "Examining National Trends in Educational Placements," *Remedial and Special Education* 38, no. 1 (2017): 8.

scope of experience.³⁸ He further argued, specifically against Kant, that the individual was also mistakenly viewed as a “ready-made self behind activities,”³⁹ thoughts, and actions in the world. By contrast, he viewed the individual as a being “in process” or “in the making” because they are continually being made and remade through transactions with one’s environment.⁴⁰ The individual, for Dewey, is embedded in and always bound up with specific historical and social contexts. He often pointed to familiar social arrangements, such as “laws, institutions” and local communities as environments that served as the principal “means of creating individuals.”⁴¹ Despite the significance of environmental factors in shaping the individual, Dewey also did not think that the individual was completely determined or constructed by them. Rather, he argued that individuals demonstrated a “plasticity” in their ability to learn from experience by forming habits of thought and action that served to shape and deflect future thoughts and actions.⁴² Dewey characterized this process of habit formation and transformation as growth because it is through them that the individual provisionally constitutes itself against the demands of their environment.⁴³ Garrison used the term “social self-creation” to capture Dewey’s view that the individual is rooted in a social context, yet capable of enacting a restricted sense of creation through engagement with it.⁴⁴ As such, Dewey viewed the individual as the combined and provisional product of both agency and structure.

Dewey’s conception of the individual can be used to retheorize the LCS to enable important changes to the process of making LRE determinations for SwID. The Deweyan student is not principally defined by abstract characteristics that educational evaluations have privileged access to. Furthermore, the Deweyan student is a communal being whose learning and development emphasize access to unstructured and opportunity-rich educational environments. Keeping these points in mind, reconceptualizing the student in this way could alter how LRE determinations are made in several ways that I will briefly discuss below. Note that the purpose of my discussion here is to sketch out some possibilities that I think become available to IEP teams as a result of retheorizing the student along Deweyan lines, rather than developing concrete alternatives for practitioners to implement.

³⁸ Dewey, “Democracy,” 98; John Dewey, “Reconstruction in Philosophy,” in *The Middle Works of John Dewey Volume 12*, ed. Jo Ann Boydston (Carbondale, IL: Southern Illinois University Press), 191-92.

³⁹ John Dewey, “Human Nature and Conduct,” in *The Middle Works of John Dewey Volume 14*, ed. Jo Ann Boydston (Carbondale, IL: Southern Illinois University Press), 97.

⁴⁰ Dewey, “Human,” 192-93, 151.

⁴¹ Dewey, “Reconstruction,” 192.

⁴² Dewey, “Democracy,” 58-59.

⁴³ Dewey, “Human,” 22-23; Dewey, “Democracy,” 58-59.

⁴⁴ Lance Mason, “The Self & Political Possibilities in Dewey and Foucault,” *Journal of Thought* 53, no. 1 (2019): 5.

First, retheorizing the student could displace the centrality of empirical data produced by educational evaluations for educational decision-making. If student learning and development are no longer reduced to a narrow set of *a priori* characteristics, then the priority ascribed to educational evaluations is diminished. Doing so would not eliminate the value and use of these instruments for educational decision-making, but rather would prevent LRE determinations from being made solely on the basis of the data they produce.⁴⁵ Furthermore, it would afford IEP teams greater flexibility to draw on a diverse range of evaluation tools and information sources to inform educational decision-making.

Second, retheorizing the student could alter the criteria on which LRE determinations are made by requiring a more serious consideration of forms of learning and development that are not as easily measured using educational evaluations. Such criteria might reasonably include forms of social, collaborative, affective, and vocational skills. Doing so would enable IEP teams to develop a potentially more robust and nuanced understanding of the student's educational needs prior to developing the IEP. Furthermore, this additional information could allow IEP teams to develop more creative ways to deploy special education resources to support the educational needs of students.

Third, retheorizing the student could alter how we view the benefits of inclusive educational placements for SwID. Educational practice is often viewed in the sense of a medical treatment in that educational needs are identified, interventions are implemented, and the effects are monitored and measured afterwards. On a Deweyan view, educational processes are misunderstood as linear exchanges initiated by the teacher and passively received by the student, but rather involve non-structured and student-driven exchanges with different features of changing environments. A Deweyan view foregrounds the value of unstructured and immersive learning using opportunity-rich environments in contrast to the priority placed on structured learning and targeted interventions established in the IDEIA. Furthermore, IEP teams would be encouraged to view a student's community of peers as an essential tool for supporting their learning and development, which could reduce their placement in separate special education classrooms.

Fourth, retheorizing the student could also facilitate a broader reconsideration of how the civil rights of students with disabilities are articulated within the IDEIA and ensured in educational practices. That is, the changes described above could require a rearticulation of FAPE to displace the priority of educational evaluations in the law to afford IEP teams greater legal flexibility regarding how they are able to provide FAPE for students with disabilities. Doing so would remove the legal barriers to implementing the changes described

⁴⁵ To clarify, my concern with educational evaluations is not with the validity of their findings, but rather with their function as the principal factor in determining LRE. I do not mean to reject the use of empirical methods for evaluating students, while also accepting such methods as they are used in empirical scholarship examining the effects of inclusion for SwID.

above in educational practices by no longer associating the provision of FAPE with specific methods of student evaluation and decision-making. Furthermore, it would enable educators to support the diverse and fluid learning and developmental needs of their students more flexibly and potentially more effectively.

Fifth, the overall effect of the changes described above could be the expansion of access to general education resources and their associated benefits for SwID. Retheorizing the student would serve to disrupt the conceptual and legal alignment between the student and aspects of the special education process that result in the determination of LRE. Doing so could fundamentally alter how IEP teams determine LRE by making it easier to legally and educationally justify the inclusion of SwID in general education classrooms. That is, deemphasizing how LRE is determined better positions IEP teams to use both general and special education resources to the benefit of students with disabilities. SwID could then be afforded increased access to the educational spaces and services that empirical studies have shown to facilitate the best learning and developmental outcomes for this population.⁴⁶ On a Deweyan view, retheorizing the student would be desirable because it would produce positive and tangible benefits for real students.

CONCLUSION

In summary, SwID receive significantly less access to general education resources in comparison to other student populations. Recent empirical scholarship has shown that this access differential negatively affects the learning and developmental outcomes of SwID. I have argued that this problem can be plausibly explained in terms of an implicit philosophical conception of the student that governs the determination of LRE for SwID by grounding the value and use of educational evaluations for informing educational decision-making. Specifically, an LCS establishes a conceptual and legal alignment between the student, empirical evaluation data, and the determination of LRE that functions to maintain educational practices that negatively affect SwID by restricting their access to general education resources that empirical studies have shown to facilitate better learning and developmental outcomes. Using resources from Dewey's work, I have argued that retheorizing how the student is conceptualized in the IDEIA carries the potential to expand opportunities for SwID to access general education resources and their associated benefits by altering aspects of the special education evaluation and decision-making process. Furthermore, doing so carries the potential to expand the inclusion of all students with disabilities by changing the implicit standards that govern student evaluation, educational decision-making, and, more broadly, the provision of FAPE.

⁴⁶ Notably, I am not arguing in support of the full inclusion of students with disabilities in general education settings. That is, I do not think that a single arrangement of educational settings and services can adequately meet the needs of all students.
