

BROKEN PROMISE

**FINAL REPORT OF THE BUREAU DIRECTOR'S
ADVISORY PANEL ON LEAST RESTRICTIVE ENVIRONMENT
FOLLOWING *GASKIN V. DEPARTMENT OF EDUCATION*
SEPTEMBER, 2005—JUNE, 2010**

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PREFACE

Sixteen years is a long time. On June 30, 1994, Lydia Gaskin and eleven other students filed a federal lawsuit in which their parents alleged that the Pennsylvania Department of Education was violating their right to a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE). Eleven years later this class action lawsuit was concluded in a Settlement Agreement (SA). This SA represented an agreement on behalf of PDE to implement a set of provisions designed to increase the number of students included in regular education classrooms and the benefit they received from education in the least restrictive environment in Pennsylvania.

Pennsylvania has therefore, from 1994 to 2010, been dealing with the issue of LRE for students with disabilities, first in litigation and then through a settlement agreement. In 2009 there were 264,409 children with disabilities receiving special education in Pennsylvania (www.penndata.hbg.psu.edu). This lawsuit, spanning 16 years, has therefore covered the entire school careers of many thousands of students with disabilities. For example, this report writer's daughter, who has Down Syndrome, was in pre-school when this lawsuit began. She is now a high school senior. In fact, taken together, 3.84 million student IEP years have been completed under the time span of this lawsuit, 1.2 million student IEP years have passed just in the time of the SA.

The implementation of this SA was therefore a large undertaking and an even bigger responsibility. The SA embodied a vision for change in Pennsylvania that affected thousands of students and their families. PDE agreed to implement the provisions of this SA to achieve the promise of more inclusive education in Pennsylvania. This promise has not been realized. Not only was the implementation of the SA minimal or absent in many key provisions but several groups of students show little if any change in LRE during the life of the SA.

This report could have been a celebration. Instead, it is a metaphor of what is wrong in Pennsylvania with education in the least restrictive environment for students with disabilities.

INTRODUCTION

"The department of Education is committed to fulfilling the terms of the agreement and is pleased to put more than 11 years of litigation behind and move forward for the sake of the affected children and their families." Abe Amoros, Department spokesperson, September, 2005

On September 19, 2005, Judge Eduardo Robreno of the Eastern District Court of Pennsylvania granted the motion for final approval of the Settlement Agreement in *Gaskin v. Pennsylvania*, ending 11 years of litigation regarding the education of students with disabilities in the least restrictive environment with supplementary aids and services in their neighborhood schools. Among the 50+ provisions of the Settlement Agreement, were those that addressed the establishment, composition, and function of the Bureau Director's Advisory Panel on Least Restrictive Environment. In addition to other enumerated roles, Settlement Agreement provision IV.2(A) states that "The purpose of the Advisory Panel will be....to analyze and report periodically on the status of implementation of this agreement and to advise PDE on implementation." The report that follows is the Panel's third and final report and it represents the Panel's fulfillment of this obligation to the Pennsylvania Department of Education, the named individuals and organizational plaintiffs.

The report and reported areas of emphasis are best viewed in totality in that the whole may be worth more than the sum of its parts as it provides both details on implementation of specific provisions as well as a large-scale picture of LRE activities to date. Any meaningful efforts to effect durable systems change, even beyond the life of the Settlement Agreement, will appreciate the critical address of both micro and macro issues.

The Bureau of Special Education was given drafts of this report. No comments were received by the panel from the Bureau of Special Education for this report or previous implementation reports (June 27, 2007 & July 15, 2009).

This final report was adopted by the panel by majority vote on June 3, 2010, in Harrisburg.

Additional reports, meeting notes and other information may be found at <http://disabilities.temple.edu/programs/lre>

FINDINGS

*The least amount of integration spread over the longest period of time.
School Board, Little Rock, AR, September, 1957*

Our findings relating to specific sections of the Settlement Agreement are presented below.

IV.1. Policy Development and Implementation

(A) PDE will require school districts to adhere to the requirements of the IDEA and case law, including *Oberti v. Board of Education*, 995 F.2d 1204 (3d Cir. 1993), when making placement decisions, including the following: (1) Students may not be removed from regular education classrooms merely because of the severity of their disabilities. (2) When students with disabilities, including students with significant cognitive disabilities, need specially designed instruction or other supplementary aids and services to benefit from participating in regular education classrooms, school districts have an obligation to ensure that those services are provided. (3) Students' IEP teams must determine whether the goals in the student's IEP can be implemented in regular education classrooms with supplementary aids and services before considering removal from the regular education classroom environment. (4) School districts will consider the full range of supplementary aids and services in regular education classrooms, based on peer-reviewed research to the extent practicable, including modification of curriculum content, before contemplating removal.

This provision was not met.

There is insufficient evidence available to the Panel to substantiate that PDE is requiring school districts to adhere to the requirements of IDEA and case law, including *Oberti*, when making placement decisions. For example, The Capital Area IU (IU 15) erected a large new facility for the IU to lease that significantly increases the classroom capacity for segregated educational placements in the CAIU service area. This much larger facility was erected and leased despite the CAIU executive director's claims that there is only an average 0.7% placement rate in other settings for school districts in the service area. This larger capacity building was reported to BSE in the CAIU's special education plan of May 2007 and approved by BSE staff. Increasing capacity prior to any expressed need from participating school districts that results from correctly completing student's IEPs in accordance with *Oberti* is alarming.

During a review of initial IEPs the panel analyzed use of assistive technology and positive behavior supports. Some concerns from this review of the IEP sample are that assistive technology is not understood and used effectively as a supplementary aid and service to support students in general education classrooms. Other issues include the absence of effective positive behavior support and/or assistive technology even in cases where the team has identified the need for assistive technology and/or positive behavior support in the special considerations section of the IEP.

Our review of the use and provision of positive behavior supports to meet the needs of students in general education classrooms shows inconsistency, incompleteness and ineffectiveness.

One positive development from the SA was the development of a Supplementary Aids and Services (SAS) Toolkit that was endorsed by the panel. The panel has recommended that it be used by all IEP teams to facilitate consideration of SAS prior to the team making a placement decision. To date the panel has not received a report on progress in implementation of the SAS Toolkit.

The Department proposed amendments to Chapter 14 to incorporate Oberti language. Chapter 14 was amended on June 27, 2008. Chapter 14 training to all LEA's has been started and will include the Oberti language. This is also a positive development. The LRE Basic Education Circular was also updated 10/1/06 with panel input.

However, the overriding issue with this provision is the issue of "requirement." PDE has shown that it is willing to require that SDs document that they have considered the least restrictive environment but does not necessarily investigate the quality of this consideration. PDE regards the IEP team's statement of consideration to be adequate. We therefore cannot report that this provision has been met since we interpret the SA as indicating that requiring adherence is more than requiring consideration.

(B) Where services from other Commonwealth or private agencies are required in order to provide a free, appropriate public education in the least restrictive environment, the services will be provided, coordinated, and paid in accordance with the interagency coordination Memorandum of Understanding entered into among PDE, the Pennsylvania Department of Public Welfare, the Pennsylvania Department of Labor and Industry, and the Pennsylvania Department of Health.

This provision was not met.

The Memorandum of Understanding (MOU), a mechanism for resolving interagency disputes, pre-dates the SA and continues to be used to resolve disputes. Copies of MOU dispute resolution opinions were requested by the panel and were posted on the Moodle (an electronic "blackboard") on 12/14/2007.

Despite the information posted on the Moodle, the AP feels more specific information must be presented to meet this obligation. Information provided was limited to a very brief report regarding very limited use of the Memorandum of Understanding. The report of use of the MOU was limited to two cases, both involving situations with more segregated settings.

Data reviewed revealed that 20.3% of children classified as emotionally disturbed are served in locations other than the regular neighborhood school. An additional 28.2% spend more than 61% of the day outside the regular education classroom. Related services data for students with emotional support needs indicated that: only 6.3% of children with emotional support needs receive psychological services; at most, 15.5% receive counseling services; and, at most, 22.8% have a behavior intervention plan.

Of the 134 districts serving 50 or more children identified with emotional support needs, 60 report that five or less students receive psychological services, counseling services, or a behavior intervention plan.

The Panel is unaware of the extent to which the services of other Commonwealth or private agencies are coordinated and paid for in accordance with the MOU. Indications are that these agency services are more often provided in restrictive settings rather than as a support within inclusive educational settings.

In June, 2006, the Panel advised PDE to formulate a capacity-building plan relevant to the provision of Functional Behavior Assessments (FBAs) and other evidence-based behavior interventions and supports for students with disabilities who exhibit behavior that impedes learning. More specifically, the Panel advised that PDE provide outreach to schools that results in a greater proportion of students receiving emotional support having access to necessary FBA and Behavior Intervention Plans and other evidence-based behavior interventions, including counseling and related services, necessary to derive reasonable educational benefit from their IEPs within the LRE. The Panel has not received further information on this advice.

(C) Special education students who are entitled to gifted support or Chapter 15 accommodations will have a single individualized education plan (“single plan”) incorporating all specially designed instruction, accommodations or other support identified by the IEP team. The Advisory Panel may review PDE policy and make recommendations to the Bureau Director for changes that clarify PDE policy related to the use of a single plan.

This provision was met.

PDE included the following paragraph in its Basic Education Circular on Least Restrictive Environment: “Additionally, PDE policy on educational placement requires that special education students who are also entitled to gifted support under Chapter 16, Special Education for Gifted Students, have a single individualized education plan incorporating all specially designed instruction, accommodations or other support identified by the IEP team.”

The panel made suggestions with regard to the “single plan” via panel member participation in a workgroup meeting with stakeholders in 2006. The panel gave input on the forms and formats that were posted on the web from 3/14/2008- 4/11/2008. Panel Input was sent by the LRE Committee Chair on 3/10/08. PDE has incorporated policy related to the single plan into the IEP documents. These documents have been shared with school districts and were to be used starting in the 08-09 school year. Additionally, a fact sheet *Gaskin Settlement Agreement Overview* was issued in January, 2007. LRE, BEC, and Fact Sheets formally supported by the panel remain in place.

In June, 2006, an Advisory Panel member participated in a PDE workgroup on “Single Plan’ policy and practice. In September, 2006, the Panel requested that PDE include that member in the design of a single plan annotated IEP format and share drafts with

the Policy and Compliance Committee, while also requesting that PDE share a summary of pilot monitoring for Gifted IEPs. To date, there has been no substantive update from PDE in response to these requests. PDE has provided no updates with regard to a pilot monitoring for Gifted IEPs. Also, the panel does not know how the documents are being shared with the district or if there is staff training for Gifted IEPs.

(D) PDE, with input from the Advisory Panel, will design and make available to parents of children with significant disabilities information about supplementary aids and services that children with disabilities can receive in regular education classrooms and information about how to seek assistance in obtaining such supplementary aids and services. The information will be supplied to parents via mechanisms such as distribution by school districts, PennLink, or the PDE website.

This provision was met.

A fact sheet on supplementary aids and services was developed with Panel input and is available on the web. There is little evidence to suggest that this information was distributed to parents through school districts. Further, parents do not typically receive information via PennLink. The information has been made available electronically to parents via the PDE and Pennsylvania Training and Technical Assistance Network (PaTTAN) websites. It is unclear as to how many parents have accessed the information through these venues.

PDE co-sponsored the PEAL Center Conference on Inclusive Education in March, 2007, and funded parent training sessions in the fall/winter of 07/08. PDE also conducted sessions on supplementary aids and services at the annual Department's Bureau of Special Education conference in March, 2007, February 2008, and the spring of 2009. C2P2 trainings through Temple University were funded for the 2005-06, 2006-07, 2007-2008 school years. PDE stated that these trainings, which focus on parent training and information dissemination, will continue throughout the life of the Settlement Agreement. However, PDE did not fund Competence and Confidence: Partners in Policymaking (C2P2) or the Arcadia summer institute for 2009-10 stating that these funds had been shifted to the *Include Me From the Start* initiative, a training and technical assistance initiative to include children with disabilities in Kindergarten and 1st grade.

To date, it is unclear as to the outcomes and impact of these trainings.

The Supplementary Aids and Services Toolkit (SAS Toolkit) was developed with input from the AP, and workshops for parents are being provided in collaboration with PEAL and other entities. There will be a minimum of three workshops per year in various locations. Additionally, the Training and Technical Assistance fact sheet is being updated and revised specifically for parents.

PDE instigated an initiative in September 2009 to develop a parent information booklet. Progress on this initiative is still very preliminary at the time of writing.

(E) PDE, with input from the Advisory Panel, will design and distribute to school districts materials for display in school buildings that make it clear that all children, including those with disabilities, are welcome.

This provision was met.

Two posters and accompanying materials, one for elementary level and one for secondary level, were developed, printed and distributed to school districts (1 for each school in the district). The Training and Technical Assistance Committee of the AP and the full Panel were consulted in the design and choice of final selected materials. Welcome materials were mailed in September of 2007. PDE issued a PennLink on October 23, 2007 reminding districts of the availability of posters and materials. Additional copies of the posters were distributed in response to requests from September 2007 through January 2008. Twelve hundred eighty-two additional Elementary posters were requested and distributed. Four hundred seventy-one additional Elementary Spanish posters were requested and distributed. One thousand ten additional Secondary English posters were requested and distributed. Three hundred forty-five additional Secondary Spanish posters were distributed. The posters continue to be available to schools at no charge.

The welcome packet accompanying the posters included lesson plans (grade K-8, and 6-12) and supplementary materials. From September 2007 through January 2008, twenty-four hundred forty-nine additional copies of the welcome packet were distributed in response to requests. The welcome packet continues to be available electronically and in hard copy at no charge. A letter from Dr. Gerald L. Zahorchak, Secretary of Education, addressed to the superintendent of each school district was included in the packet. The panel has endorsed the welcome packet.

It remains widely reported however, that these posters are not prominently displayed in all of Pennsylvania schools. It has also been reported that when parents/advocates ask about the posters and/or welcome packets and materials, the school staff are unaware as to what the parent/advocate is referring – this is happening across Pennsylvania and not just in one region.

IV.2. Advisory Panel

(A) PDE will establish the “Bureau Director’s Advisory Panel on Least Restrictive Environment Practices” (the Advisory Panel), a special advisory group to the Bureau Director. The purpose of the Advisory Panel will be to review system-wide progress in the delivery of individualized specially designed instruction in regular education classrooms to students with disabilities in Pennsylvania, to analyze and report periodically on the status of implementation of this agreement, and to advise PDE on implementation.

This provision was met.

The Advisory Panel (AP) has met quarterly with an additional organizational meeting on January 29, 2006 and a PATH facilitation on March 5, 2007. The AP provides advice, analysis, reports and recommendations at each meeting. Panel meetings

have typically been held in the Harrisburg area. The September 2007 meeting was held in Pittsburgh at the request of the panel. There have been conference calls between quarterly meetings where the full AP has had opportunity to attend. This has given the panel the opportunity to function between meetings when appropriate. There have also been occurrences when teleconferencing has been provided by the plaintiffs. Since January, 2009, the panel has been meeting monthly via teleconference. In addition to full AP meetings, subcommittees have met to discuss various issues and reported to the full AP.

PDE has also made staff available, and arranged for conference calls with other PDE Department leaders at times outside the scheduled panel meetings e.g., phone call with Maureen Cronin from PDE.

(B) The Advisory Panel will consist of fifteen members, at least nine of whom will be parents of children with disabilities who are not employed by PDE or by any school district or other local educational agency in Pennsylvania. During the life of the Settlement Agreement, the members will be selected annually as follows: (1) Twelve members will be selected by the organizational plaintiffs, as provided in Section IV.2(B)(5) of the Settlement Agreement. (2) Three members will be selected by the Bureau Director. (3) All members will serve for terms of one year, and will be eligible for reappointment to additional terms up to a maximum of five terms in succession. (4) The membership of the Advisory Panel will be representative of the population of children served in special education in Pennsylvania with respect to race, ethnicity, cultural characteristics, geography, and age. (5) The organizational plaintiffs will be responsible jointly for selecting twelve members of the Advisory Panel. These members will include persons with recognized expertise in research and practices related to the provision of a free appropriate public education to children with disabilities in the least restrictive environment. The names of the organizational plaintiffs' initial representatives will be forwarded to the Bureau Director by no later than the sixtieth day following the effective date of the Settlement Agreement, and by no later than March 31 of succeeding calendar years during the life of the Settlement Agreement. (6) In the event of a vacancy, the party or parties who selected the member will designate a replacement.

This provision was met.

The panel's membership has met these requirements and was appointed as outlined in the SA except that three positions were unfulfilled for 2008 due to difficulty recruiting potential members. A total of 34 members (including two alternates) served on the panel over the life of the SA. Names of panel members are as follows.

Reggie Bonfield (PDE nomination)
Kathy Brill
Diane Bryen
Jeff Champagne (PDE nomination)
Margeret Drayden
Martin Elks
Joseph Gaskin
Michael Glass
Amy Goldman
Elizabeth Hemmings
Carol Hemmingway and Stephanie
TrottBatipps (alternate)
Sarah Holland
Paulette Hunter
Jill Hrinda-Patten
Sherry Kidd
Tim Knoster

Linda Lengyel
Sallie Lynagh
Michelle McCollin
Bernard Miller (PDE nomination)
Thomas Neuville
Emilio Pacheco
Pina Rahill
Linda Stengle
Susan Tachau
Cathy Taschner and Kim Donahue
(alternate) (PDE nominations)
Lisa Tessler
Nicole Turman
Gail Walker
Shelby Walker
Ned Whitehead
Nancy Wintering

(C) Advisory Panel members will receive reimbursement at Commonwealth rates for their travel costs to participate in the work of the Advisory Panel.

This provision was met.

PDE has reimbursed Advisory Panel members for their travel costs at the Commonwealth rate.

(D) The initial meeting of the Advisory Panel will be held no later than ninety days following receipt by PDE of the names of the organizational plaintiffs' twelve initial nominees.

This provision was met.

The initial meeting of the Panel was held December 14 & 15, 2006 which was within the ninety day window of February 16, 2006.

(E) The Advisory Panel will meet quarterly to review and evaluate all relevant data on system-wide progress in implementation of all components of the Settlement Agreement and to make recommendations for continued progress.

This provision was minimally met.

As mentioned above, the panel has met quarterly and made many recommendations to the Bureau. However, this provision was minimally met because the requirement to review and evaluate "all relevant data on system-wide progress in implementation of all components" has not been met due to PDE's difficulty and/or (in some instances)

refusal to provide requested data. Two outstanding data requests are for additional IEPs and for reports of complaint.

(F) The Advisory Panel will develop a committee structure to facilitate the effective performance of its work.

This provision was met.

The Panel developed a structure comprised of the following committees: (1) Executive, (2) Inclusive Practices, (3) Policy and Compliance, and (4) Training and Technical Assistance.

(G) The Advisory Panel will select from among its members a Chair and a Vice Chair. The Advisory Panel will develop its own operating rules and procedures (which will be consistent with state law and PDE policies applicable to the deliberations of advisory panels), designate the committees it considers necessary to its effective operation, and appoint Advisory Panel members to committees.

This provision was met.

The following panel members served as chairs to the Panel: Joseph Gaskin, Sally Lynagh, Cathy Taschner and Martin Elks. The panel's operating rules were developed in the first year (2005-06).

(H) PDE will make data available to assist the Advisory Panel in assessing the efforts of school districts and other programs in assuring a free appropriate public education in the least restrictive environment for schoolchildren with disabilities. The Advisory Panel will review samples of student IEPs to determine whether school district staff understand and are following the policies on compliance monitoring set forth in Section IV.4 of the Settlement Agreement.

This provision was minimally met.

As mentioned above, the issue of providing data has been problematic for the life of this Settlement Agreement. PDE's response to data requests by the panel was to create a "user-friendly" data request form that may only be completed by the panel or committee chair and that requires, among other things, to state "*the specific component (paragraph and language) of the settlement agreement that **requires** PDE to respond to this request*" [emphasis added]. Thus, the general provisions for data provision outlined above are not sufficient to request data, PDE requires in addition, the specific provision within the SA implying that PDE will not provide data unless it is **specifically required** by the SA. The form also stated that requests had to identify what data source we were expecting PDE to use to respond to the request.

Development of a data request form was perhaps understandable if PDE was being flooded with obscure and unreasonable data requests by panel members. This has not been the case however. Data requests have been clearly based on monitoring concerns relating to implementation of the SA.

On June 4, 2007, the executive committee of the advisory panel informed Mr. Tommasini, Director of the Bureau of Special Education that we disagreed that (a) the panel must invariably cite a SA reference more specific than the general provisions listed on the form, (b) that panel members are not required to have knowledge of data sources beyond PennData that only those working within PDE would possess, (c) no other advisory panel we know of is required to comply with such a procedure and (d) the requirements contradict the provision that the advisory panel develop its own operating rules and procedures. The communication concluded with a statement that we are willing to work with PDE to develop a mutually acceptable process. There has been no response to this communication.

Outstanding unfulfilled data requests include:

- Sample IEPs
- Data for students with specific disability categories (and placement and related services) by school district
- List of districts by phase of special education and strategic plan submission
- Mini-grant recipients "exit" reports for 2005-06 implementation
- Raw data from needs assessments
- Complaint investigation reports

Finally, we recommended that the Bureau conduct its own identification, analysis and definition of the key data elements it believes would meet the requirement to evaluate all relevant data on a system-wide progress in implementing all components of the SA. A quarterly "Comprehensive Data-Based Summary Report of LRE in PA" would be an excellent document to provide to the panel for review. In September, 2009, PDE developed an initiative that was responsive to this recommendation relating to a comprehensive data-based summary. The panel gave advice as to content and format as requested. However, this initiative, coming in the final months of the Settlement Agreement, was not completed at the time of this final report.

The Panel has however, been able to access data including the following:

- Neighborhood schools LRE data for first-grade
- Single plan data (gifted students with IEPs)
- LRE data by school district
- LRE data for Tier 1 school districts (2005-6 and 2006-07 and 2007-08)
- Student LRE placement over time by disability
- Professional development provided to districts identified as Tier 1 and 2 over the past three years, and
- One sample of IEPs for analysis

One set of data PDE initially refused to provide the panel was the data from the school level self-assessments of their need for LRE training. It was not until the matter was raised in mediation and concluded after two years of formal mediation meetings between the plaintiffs and PDE that these data was provided.

It is also important to report that when data is provided it is often in a very user-unfriendly format with little or no analysis e.g., hundreds of raw numbers or percentages. For example, the data provided on changes in LRE percentages for Tier

1 school districts—which is a key indicator of progress as a result of this agreement—was provided in five pages of columns containing 2,240 percentages (20 school districts x 14 disability groups x 4 placement levels x 2 years). No analysis was provided by PDE and when asked at a panel meeting whether LRE was improving in Tier 1 schools we were told that “improvement is occurring” and to look at these data on the Moodle.

When the panel requested data on LRE by disability over time in Pennsylvania we were asked to provide model graphs to PDE. It is surprising that a Department of Education that handles vast amounts of data and had staff dedicated to data analysis and display has to ask the panel how to graph key LRE data.

The issue regarding review of IEPs has never been resolved. Recognizing that there are over 250,000 active IEPs in Pennsylvania at any one time, the panel requested that it begin with a small manageable but meaningful sample of IEPs. Accordingly, it requested that each Year One Tier One school district provide two consecutive redacted IEPs representing their best examples of LRE. One IEP should be from 2005-06 and one should be from 2006-07. Each consecutive IEP should be of the same student. The student chosen should be a student with a cognitive disability (e.g., intellectual disability). This would provide a total of 40 IEPs (two from each of 20 students) and be a useful sample from which to make further recommendations for IEP review by the Panel.

Without any discussion, PDE responded to our request by supplying a one time only single stratified random sample of 51 redacted IEPs. Such a sample is too small to be considered representative of the population of IEPs in Pennsylvania and therefore any conclusions made from the sample could not be generalized across all IEPs in Pennsylvania. In fact, the sample is so small that it's utility lies largely in provided a pilot sample for developing review formats for future samples of IEPs.

Despite the limitations of sample, the panel conducted a review of the IEP's and found the following:

- 1) That these IEP's were not developed in compliance with the requirements of the Oberti decision or Congress' strong preference for inclusive education as defined in the IDEA, and
- 2) It is evident that more segregated placements were often determined based on the student's disability. For example:
 - Due to the nature and the severity of his disability, in addition to the extent and degree of the needed accommodations and assistance, _____ does not presently participate in the general education curriculum, _____ requires modifications in all curricular areas and functional daily routines." Placement: Approved Private School (Non-residential)
 - _____ emotional and behavioral difficulties prevent him from gaining maximal benefits from instruction in the regular education setting at this

time. Therefore, it is recommended that he receives instruction in a highly structured, more individualized setting that includes a behavioral management program to address his needs." Placement: Approved Private School (Non-residential)

The panel also requested IEPs from the same students identified in the first sample of 51 IEPs in order to review any changes in IEPs that may be attributable to the impact of this SA. PDE however, refused to provide these IEPs stating that they had fulfilled their obligations to the SA with the one-time sample of 51 IEPs. Changes in the consideration and provision of LRE in these 53 students would have been powerful information as to the impact of this Settlement Agreement.

Finally, PDE does not report data cells including ten or fewer students or 10 or less percent citing federal confidentiality requirements. However, there is no 10 student threshold in the SA and, as will be discussed with Corrective Action Plans below, this threshold defeats the purpose of data since few conclusions may be drawn from blank data cells. The panel believes that a threshold of "10" is a convention and not mandatory and that perhaps other ways could have been used to provide the necessary information in a confidential manner to the panel.

(I) Data made available to the Advisory Panel will include the number of special education students in each school district who begin first grade outside the regular education classroom in their neighborhood schools.

This provision was not met.

Data for first graders educated in settings outside of regular schools has been made available to the Panel and the public. Data reflecting first graders in and out of their neighborhood schools has been provided to the extent available. However, PDE chose to interpret this provision as showing percentages of first grade students attending their neighborhood schools by intermediate unit not classroom. The SA asked for data for first grade students outside the regular education classroom not outside the neighborhood school. This is not responsive to this requirement of the Settlement Agreement "Outside of the regular schools" is not the same as "outside of regular class."

Moreover, the provision of the data according to Intermediate Unit is not helpful since it introduces an additional level of complexity in making sense of these data which is simply asking how many students with disabilities are being included in regular education in first grade.

(J) Data provided to the Advisory Panel will be in a form that complies with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (1996); the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; IDEA; and other applicable federal and state privacy laws.

This requirement has been met.

Student level data is redacted before data is provided to panel. Data provided consists of aggregate school district, region, and/or statewide data.

(K) The Bureau will provide a reasonable level of support, including staff support, to the Advisory Panel consistent with PDE's budgetary resources and as determined by the Bureau Director.

This provision was partially met.

Documents are duplicated and distributed among panel members. Committees hold conference calls at PDE expense. Support has been provided to panel members in terms of conference calls, accommodation and meals at quarterly meetings, requests to obtain rooms for committee meetings prior to panel meetings, and the continued support of a facilitator at panel meetings and prior to panel meetings.

However, a request for travel support for stakeholders who are family members of people with disabilities or persons with disabilities who worked on committees and sub-committees was denied. Requests for documents in alternative formats (one panel member has a visual impairment) were not consistently addressed. In addition, PDE did not participate in the June, 2009 quarterly meeting either in person or by way of written report.

(L) The Advisory Panel will assist in the design of an assessment of the needs of school district and intermediate unit personnel in research-based practices and the provision of supplementary aids and services in regular education classes. The needs assessment will evaluate actual practice in districts against standards for good practice in the field.

This provision was met.

Members of the Training and Technical Assistance Committee contributed input to the Needs Assessment (building level) prior to its pilot in nine districts in October, 2006. In December and January, 2006 the Panel had an opportunity to provide input to the Needs Assessment at the district level. The needs assessment was finalized in March 2007. Training for Intermediate Unit Training and Consultation Staff and BSE personnel on the District Level Needs Assessment occurred in March, 2007.

The needs assessment is being used by districts identified as having systemic LRE compliance issues. Additionally, all districts that applied for inclusive practices mini-grants were required to use the needs assessment. As of 2/29/08, 55 districts have completed the district level needs assessment. A detailed report of districts and schools that completed needs assessment as of 2/29/2008 was provided to the panel in March, 2008. It should be noted that the panel has asked to see the raw data from the needs assessment but this request has been denied.

In addition to evaluating practices at the district level, the Inclusive Practices Evidenced based self-assessment includes a component to assess practices at the

school building level. As of August 31, 2009, 340 schools have completed this component. However, the panel cannot draw any conclusions from these data since it did not have access to the raw-data from the self-assessments during this time period.

Beginning 07-08 LRE monitoring, Tier 1 SDs completed the District Level needs assessment. As of August 31, 2009, the District Level Needs Assessment has been completed in 221 SDs.

The panel has fully endorsed the needs assessment. In fact, the TTA committee of the panel has requested that the needs assessment be given to all schools. This was endorsed by the panel, but has yet to occur.

(M) The Advisory Panel will assist the Bureau Director in identifying school districts in Pennsylvania that have developed exemplary programs and practices in the area of education in the least restrictive environment, recognize these districts through awards, and assist them in developing materials for dissemination that will assist other districts in replication of their work.

This provision was minimally met.

PDE sought and received nominations of exemplary programs. This was done with input from the panel as well as with input from Dr. Graciela Slesaransky-Poe of Arcadia University. Dr. Slesaransky-Poe also assisted in developing a validation protocol, and in training reviewers for validating exemplary programs.

An outline of the proposed process was shared with the panel in March 2008. Only five exemplary programs were identified by September, 2009, one year prior to the end of the Settlement Agreement.

IV. 3. IEP Format

(A) PDE will continue to provide an Annotated IEP Format to guide school districts in developing IEPs.

This provision was met.

PDE continues to provide an Annotated IEP Format.

(B) By no later than December 31, 2005, PDE will modify the LRE portion of the Annotated IEP Format as agreed to by the parties. A copy of the modified text is attached to the Settlement Agreement and incorporated herein by reference as Exhibit A. The same modification will be incorporated into the IEP Format at the same time.

This provision was met.

The IEP format and annotated format modifications were completed March 31, 2006. It is available in Spanish and English versions. Panel input was sought and given. Additional language from the annotated IEP modification supplements the IEP format.

A PennLink regarding the IEP supplement was issued in January 2008. School Districts were notified that the changes were effective February 1, 2008. The IEP supplement has been incorporated into the IEP format as of July 1, 2008.

However, the Advisory Panel has requested but has not seen or reviewed an IEP format for 3-5 year olds.

(C) For a period of three years commencing on the effective date of the Settlement Agreement, PDE will not make other modifications to the LRE portion of the Annotated IEP Format or IEP except with the consent of the plaintiffs; except that, should modification be required by changes in applicable federal statutory or case law or by the USDOE, PDE will be entitled to make appropriate modification following notification to the plaintiffs' counsel. By no later than the sixtieth day following the effective date of the Settlement Agreement, PDE will notify school districts that it is likely that the current IEP Format will have to be modified to address changes in the law due to the reauthorization and amendment of the IDEA in late 2004.

This provision was met.

In March, 2007, the Annotated IEP format was revised to include the sentence, "Parents must be part of any group that makes decisions on the educational placement of their child" as well as consideration of supplementary aids and services in extracurricular and nonacademic settings. Reportedly, a Penn Link announcing these and other changes was issued March 12, 2007.

In February 2008 PDE added four questions to the IEP in the LRE section. These were then added to the actual IEP document in July 2008. The Panel does not know what training has been given in discussing these questions or whether the answers to the questions are required to be stated on the IEP. It is not clear if and how parents receive information about the July 2008 additions to the IEP.

School Districts were notified via PennLink about the changes in the IEP and were invited to participate in training.

(D) The Advisory Panel may suggest other modifications to the LRE portion of the IEP format for consideration and approval of the Bureau Director.

This provision was met.

The panel submitted changes and recommendations to the BSE on March 10, 2008 including the following:

1. Behavior plans must be included in the body of the IEP, using the usual progression of present levels, goals, interventions and measurement and not attached as a separate document.
2. Regarding the LRE placement data section, if the student does not attend his/her neighborhood school, LRE calculation ends – the school district should not receive "credit" for a student's attendance in regular education classes in another school and/or school district.

Neither of these recommendations was approved by the Bureau Director.

(E) By no later than the sixtieth day following the effective date of the Settlement Agreement, PDE will provide written guidance to all school districts related to completing the LRE portion of the IEP. The guidance will explain the phrases “LRE percentages” and “time in a special education class” and explain how to calculate the “LRE percentages” and “time in a special education class.” A copy of the guidance is attached to the Settlement Agreement and incorporated herein by reference as Exhibit B.

This provision was met.

A memo of clarification entitled “Least Restrictive Environment” was issued March 16, 2005 by the Bureau Director.

IV.4. Compliance Monitoring

(A) “Compliance monitoring” refers to a range of activities undertaken by PDE to assure that local educational agencies are complying with the requirements of the IDEA and other federal and state laws protecting the rights of schoolchildren with disabilities. Compliance monitoring will include three forms:

(1) “Regular cyclical monitoring” is required by the USDOE and is performed in accordance with a time frame negotiated with the USDOE so as to encompass all local educational agencies in Pennsylvania over an agreed-upon period of time. Commencing no later than January 1, 2006, regular cyclical monitoring will include the additional steps described in Section IV.4(H)(4) of the Settlement Agreement.

This provision was met.

PDE completes the process of regular cyclical monitoring. For Districts subject to cyclical and Tier 1 LRE monitoring, both the LRE monitoring protocol and the cyclical monitoring protocol are used.

(2) “Targeted monitoring” is performed by Bureau personnel in response to specific deficiencies or shortcomings identified through the regular cyclical monitoring process because of complaints from family members or advocacy organizations or through other means.

This provision was minimally met.

This is one of the provisions of the SA that could be used to lead to significant changes in LRE in PA. This provision of the SA was not utilized until June 2008, almost three years into the SA timeline. On May 8, 2007 the chair of the Policy and Compliance Committee requested a list of SDs that have been subject to target monitoring and the status of such monitoring. At the May 31, 2007 quarterly panel meeting PDE stated that “At this point, no source has identified any school districts for Target monitoring. If

districts are identified via PDE criteria, target monitoring will occur.” At its meeting in June, 2007, the advisory panel requested that PDE provide the panel with the criteria PDE is using to identify school districts for target monitoring. No one from PDE was able to state or otherwise provide the criteria PDE was using despite the presence of the Deputy Director and his various assistants at that meeting. PDE responded that they did not have the criteria with them at that time but would send it to the panel by July 15, 2007. After repeated requests for the criteria to be supplied the panel was informed that the criteria would be provided at the September 2007 meeting.

Only seven school districts, all in Philadelphia, have been target monitored during the life of the SA. The monitoring reports are published on the Moodle. The panel sees this mechanism as another way to increase LRE in PA, one that appears to be under utilized in increasing LRE given the surprising low number of schools receiving target monitoring.

(3) “LRE monitoring” is new. LRE monitoring focuses on half of Pennsylvania’s 501 school districts every year, and will be conducted at various levels of intensity depending on a particular district’s relative place on a list developed by reference to an LRE index. LRE monitoring, in contrast to other forms of monitoring, will, to the maximum extent feasible, be based on the following principles: (a) LRE monitoring will be based on a limited number of priorities (goal statements) identified by PDE following input from a diverse group of stakeholders through the Advisory Panel. Priorities will include: (1) increasing the number of students with disabilities included in regular education classes and neighborhood schools with needed supplementary aids, services and support; and (2) developing IEPs capable of providing students with disabilities a meaningful benefit from education. (b) LRE monitoring will be based on a limited number of indicators (objective measures of the goal) identified by PDE within each priority area. (c) LRE monitoring will be based on comparisons to state averages identified by PDE. Monitoring standards will be clearly communicated to school districts. (d) Triggers (levels of performance at which PDE will intervene and require corrective action) will be clearly communicated to school districts.

This provision was not met.

The Panel had an opportunity to provide input on priorities and indicators for LRE monitoring in January, 2007. The input offered included a restatement of those priorities identified in the Settlement Agreement, and the addition of the following: increasing school districts’ capacity to provide specially designed instruction, related services and supplementary aids and services to students in regular classrooms; school districts welcoming of all children with special needs; the ready availability of meaningful supplementary aids and services provided in a non-stigmatizing manner; and adherence to Oberti standards. The Panel was asked for additional input in amending the LRE protocol for the 2007-2008 school year. PDE contracted with Dr. Gail McGregor, a nationally known expert in inclusive practices, to make recommendations based on her review of the 05-06 and 06-07 LRE monitoring protocols, relevant provisions of the settlement agreement, and the advisory panel input. Dr. McGregor’s recommendations are reported to be incorporated into the LRE

monitoring protocol. However, the relationship between Dr. McGregor, the plaintiffs and the panel was problematic since the panel was not included in the mediation sessions discussing Dr. McGregor and the panel was denied a request for a teleconference with Dr. McGregor to clarify issues.

(B) Overview.

(1) All categories of compliance monitoring serve the purpose of assessing the educational progress of children with disabilities, as measured by several outcomes. All categories of compliance monitoring will be conducted in accordance with the following general rules: (a) Compliance monitoring will be data- and information-based and verifiable. (b) To the extent practicable, PDE will allocate its monitoring resources so as to address areas of greatest need. PDE will use data-based information to make judgments about the allocation of its resources. (c) As permitted by its resources, PDE will provide support, including focused, customized technical assistance, to school districts in need of such support. (d) PDE will exercise its authority to levy sanctions for failure to take actions required under the terms of a CAP. (e) Families of children with disabilities will have avenues of communication to provide information to PDE on a continuous basis.

This provision was not met.

The monitoring protocol includes an analysis of LRE, continuum of services, supplementary ideas and services, dispute resolution parent and professional training and interagency coordination. The panel expressed concerns about the adequacy of the monitoring protocols specifically with the closed ended approach they embody which severely limits the ability of the assessors to search for underlying systemic barriers and issues.

Districts were selected for monitoring based on the greatest deviation from state placement averages in three categories (see page 55). The degree to which PDE has provided focused, customized technical assistance to districts in need is unclear from the CAPs and there continues to be tension between the expectation of mandated technical assistance to non-compliant districts and PDE's less stringent "offering" of support.

PDE has never attempted to address provision (e) calling for avenues of communication to PDE by families on a continuous basis as opposed to the infrequent opportunities that arise during compliance monitoring.

(2) PDE's monitoring staff will be appropriately trained and will engage in regular professional development. Compliance monitoring will be done in accordance with a five-tier process, with initial triggers for each level of intervention as set forth below: (a) Tier One LRE Monitoring of 20 school districts (excluding any school district implementing a Tier One CAP) identified via data analysis as most in need of systemic LRE-related changes. (b) Tier Two LRE Monitoring based on a warning designation for school districts identified in the bottom ten percent (approximately) of data analysis (excluding any school district implementing a Tier One or Tier Two CAP). (c) Tier Three LRE Monitoring based

on an alert designation for school districts identified in the remaining bottom half (approximately) of data analysis. (d) Targeted monitoring based on referral by a Bureau staff member due to extenuating circumstances within the school district. (e) Regular cyclical monitoring of all Pennsylvania school districts coordinated to the district strategic plan process, currently on a six-year cycle as approved in the Pennsylvania state plan approved by the USDOE.

This provision was met minimally.

PDE's monitoring staff were trained in LRE monitoring and the Oberti standards and LRE in March, 2007. A webinar training for peer monitors was conducted in April, 2007. A recommendation by the Panel to provide two-day training to compliance personnel that would result in certification upon demonstration of proficiency in LRE investigations was refused by PDE for civil service-related reasons.

A session on "Access to General Curriculum for Students with Significant Disabilities" was held in March 2008. Professional development has also been incorporated into monthly BSE staff meetings. BSE staff also attend sessions at PDE conferences, PEAL conferences and other statewide and regional professional development activities on an ongoing basis. Further, BSE staff participated in the LRE improvement series. However, it is difficult to gauge the effectiveness of these trainings as no data has been provided that links BSE staff training to effective outcomes in the school districts to which they in turn provide training. Moreover, the Panel has not been allowed to participate in any monitoring in order to get a first-hand knowledge and appreciation of the process.

With respect to the 20 SDs in Tier 1, Year 1 (see p. 52) Philadelphia was identified as Tier One for two years in conflict with the Settlement Agreement provisions, by dividing it into two districts. Erie City School District, identified for Year One, was exempted and Abington School District, identified for Year Two, was excluded due to data anomalies. By way of remedy, PDE has proposed to monitor additional districts in subsequent years.

Warning letters were sent to 30 districts each year. Additionally, each tier 2 school district is contacted to reinforce the warning and offer assistance. Focused LRE training activities are also available to Tier 2 SD's. While the panel acknowledges that these activities are steps taken beyond the settlement agreement, there is great concern in the continued tone of "availability" of support, rather than mandated support.

Alert letters were sent to 200 SD's in 05-06, to 180 SD's in 06-07, 165 SD's in 07-08, 146 SD's in 2008-09 and 125 in 09-10.

(C) Identification of school districts via data analysis. On an annual basis, PDE will review statewide data on all 501 Pennsylvania school districts to identify districts having data factors indicating a need to improve in the area of LRE. School districts will be identified for LRE improvement by assigning to each district an "LRE index score." The LRE index score will be determined by

weighting data factors as agreed to by the parties. The data will be reviewed annually and school districts will be identified annually under the following categories: (1) The twenty school districts at the bottom of the list will be identified for “Tier One LRE Monitoring.” (2) School districts in the bottom ten percent of all Pennsylvania districts but not identified for Tier One LRE Monitoring will be placed on a “warning list” and identified for “Tier Two LRE Monitoring.” (3) School districts in the bottom fifty percent but not identified for Tier One LRE Monitoring or Tier Two LRE Monitoring will be placed on an “alert list” and identified for “Tier Three LRE Monitoring.”

Districts’ LRE index scores will be made public as part of school and district report cards under the No Child Left Behind Act and the IDEA.

This provision was met.

Via educational placement data analysis, PDE identified Tier One, Two, and Three districts as set out in the Settlement Agreement. The tiered lists of districts have been made publicly available on the PDE website. PDE has placed District LRE index scores on its PennData website for 2006-07 & 2007-08.

(D) Tier One LRE Monitoring. (1) By no later than December 31, 2005, and by no later than December 31 of each subsequent year, school districts will be identified for Tier One LRE Monitoring on the basis of the data analysis described in Section IV.4(C) of the Settlement Agreement. With respect to the initial identification of school districts in calendar year 2005, however, the parties may, by mutual agreement, identify and substitute particular school districts for Tier One LRE Monitoring in lieu of districts that would otherwise be identified on the basis of the data analysis described in Section IV.4(C) of the Settlement Agreement. (2) Monitoring visits will be conducted by a team consisting of a minimum of three members, with larger teams for larger school districts as appropriate. Team members will be appointed by the Bureau Director. Parents and advocates will be included as team members. (3) The process will involve an analysis of information similar to that used in regular cyclical monitoring with the following additional elements: (a) Analysis of data to determine if there is a legitimate basis for identification of the school district for Tier One LRE Monitoring; (b) A determination of whether the school district is identified for Tier One LRE Monitoring due to a refusal to comply with IDEA; (c) A determination of factors resulting in the school district’s identification; (d) Selection of appropriate intervention(s) to remedy deficiencies; (e) Continued oversight by PDE to determine whether intervention is effective; and (f) Other additions recommended by the Advisory Panel and approved by the Bureau Director. (4) Visits will last a minimum of two days on-site, with adequate pre-visit preparation and post-visit follow-up. The process will start with facilitated self-assessment and validation of data. There will be on-site review of student files; interviews; and review of outcome data. (5) The team will conduct an exit conference with school district representatives. Team members will use the exit conference to discuss the elements of a CAP to remedy any deficiencies found to exist. (6) If deficiencies are found to exist, then the Bureau will follow up by submitting a written CAP no later than six weeks following the on-site visit. The

school district will be required to complete the CAP. The CAP may require one, two, or more years to complete, with interim reporting and monitoring obligations. Required training will be identified to address specific areas in the CAP.

This provision was not met.

Districts were identified for Tier One monitoring through a process agreed upon by the parties, though not by December 31, 2005 for Year One due, in part, to the timing of the Court's order. The Panel cannot comment on the size or composition of the monitoring teams as provision of that information was denied. Though monitoring was to include a determination of whether the district is identified for Tier One LRE Monitoring due to a refusal to comply with IDEA, PDE's reply to inquiry on that determination for each identified district was: "School districts do not have an option whether to comply with IDEA requirements. PDE is required to exercise general supervisory authority to ensure compliance, in part, through monitoring and corrective action."

On-site visits, preceded by a self-assessment, were reported to last a minimum of two days and included data validation, file reviews, and interviews. The analysis of outcome data appears less clear. It is reported that exit conferences were held to discuss the elements of a CAP. In Year One, 17 of the monitored districts were found to be out of compliance for continuum of placement options, as well as numerous procedural violations. Compelling information regarding non-compliance with Oberti and IDEA LRE requirements yielded from interviews with teachers, parents, and administrative staff, were not cited as violations.

Though the Panel provided extensive input into the development of interview protocols, much of which was applied in Year One, PDE revised the interview protocols for Year Two with the expressed intention of standardizing responses to achieve statistical validity in determinations of compliance or non-compliance. The Panel advised PDE in March, 2007 to revert to the interview protocol of Year One, however the Department denied this request based on reason of timeliness. Unfortunately these revisions, which may have been motivated by good intentions, have had a deleterious impact on the monitoring process from the Panel's perspective.

Though the Settlement Agreement plainly states the CAPs' purpose to "remedy any deficiencies found to exist," the Panel determined significant and substantial shortcomings in the Year One CAPs. Most plans were limited to an address of procedures, caseloads, and accurate data reporting. During its March, 2007 panel meeting the Panel formally advised PDE that "the documents created as a result of the 2005-2006 LRE monitoring and referred to by PDE/BSE as "CAPs" are, in fact, not CAPs, as they do not contain all of the required elements to constitute a CAP, per the Settlement Agreement in *Gaskin v. Commonwealth*." An analysis of the Year One CAPs concluded: "It is highly unlikely that durable positive change with respect to LRE will be realized as a result of these CAPs." PDE has indicated its agreement that the CAPs can and should be strengthened and made more specific in the future.

While the Settlement Agreement contemplates the possibly long-term nature of rectifying systemic deficiencies, allowing that CAPs could take one, two, or more years to implement, PDE has made a distinction between CAPs, which must be resolved within a year as per federal requirements, and Improvement Plans, or long-term plans for systemic improvement that will be subject to monitoring and enforcement as a CAP.

Year 2 Tier 1 Improvement Plans submitted as components of the Corrective Action Verification Plans from PDE were reviewed by the Policy and Compliance Committee. IPs were summarized as a whole using the following rubric. Each plan was analyzed in five ways: (a) why the school district needed an improvement plan, (b) needed improvement, (c) components of that particular school district's plan for improvement, (d) a rating of each components likely impact on the stated needed improvement, and (e) a rating as to the likelihood that this plan, taken as a whole, would make a significant impact on the stated needed improvement.

A five-point scale was used to evaluate impact on needed improvement:

- 2=Strong negative impact on needed improvement
- 1=Some Negative impact on needed improvement
- 0=Neutral impact; More information needed; Plan to plan; Unclear or Vague
- +1=Positive impact on needed improvement
- +2=Strong positive impact on needed improvement

Findings

1. Timing

These plans have taken over 5 months to produce. The SA specifies 6 weeks.

2. Lack of Significant Goals

While these plans include 24 goal statements, each goal is written in a way that is very vague. For example, goals refer to an "increase" in percentage of students, and "expansion" of inclusive options, "increase in trend," or "build capacity." These statements are so vague that almost anything can qualify as success. What is needed is significant and meaningful change. For example, all First Graders need to be fully included in their neighborhood school not just some vaguely increasing percentage.

To "correct" means to make right, to "improve" means to use profitably or to good advantage. While many of these activities may lead to some improvement the Settlement Agreement is focused on correction. By 2010 we are expecting to see real change not "some improvements."

3. Easy Reversibility

The plans have little likelihood of developing a firm foundation for long-lasting systemic change. On the contrary, any positive momentum these activities may produce can be easily reversed with the prospect that Pennsylvania could soon return to the bottom of the nation with respect to LRE. Until there is an actual increase in the number of students with disabilities participating fully in general education for their entire school career little long-lasting change will be achieved. It is easy to stop an "improvement

activity,” it is much harder to remove a child who is well integrated into the general school environment, is learning and benefiting all students.

4. Over-Reliance on Training Activities

Training activities are the overwhelming emphasis of the Improvement Plans. However, training is a necessary but not sufficient means to meet the priorities of the SA. For example, PaTTAN has been conducting LRE-related training in Pennsylvania for many years but we are still on the bottom level of LRE rankings nationally. If training is to be the main mechanism for achieving increased LRE in Pennsylvania, as these plans indicate, we have to conclude that it is highly likely that these plans will fail.

While the topics of much of the proposed training is very relevant, there is little specificity as to who will be trained, when, by whom, what the expectations will be for implementation in the classroom and most importantly, how the training relates to achievement of specific goals. For example, simply meeting with Dr. Villa three times is unlikely to lead to long-term systemic change. This is even further cause for concern given that PDE has not provided the Panel with any outcomes-based evaluation data on trainings provided.

The assumption seems to be that gently exposing teachers and others to ideas of inclusion and LRE will automatically lead to the adoption and implementation of these ideas in the classroom and an inevitable increase in LRE for all students. This assumption is highly questionable. What is needed is training within a context of system change and accountability for goal achievement.

5. Lack of Address of Complexity

Systemic change is very complex. These plans focus on specific discrete matters of compliance rather than understanding and addressing the many complex issues faced by Tier One school districts. These complex issues include a long history of non-inclusive practices and mindsets and a system of education in Pennsylvania that has condoned and even encouraged such practices.

6. Ineffectiveness

Activity does not equal results. These plans prescribe a lot of activity (see Figure) but the connection between these activities and the address of the significant issues that led to a particular SD being identified as Tier 1 is absent or unclear. In some instances the activities may increase not reduce problems of LRE.

The panel concluded that these Improvement Plans (IPs) would have little impact on LRE in Pennsylvania and have wasted a year of the Settlement Agreement timeline in their development. Furthermore, these IPs could not be accepted as meeting the requirements of the Settlement Agreement.

The panel also concluded that the process of LRE monitoring being conducted by PDE is unsatisfactory and is wasting time and that there is a significant lack of congruence between PDE’s interpretation of the SA with respect to Corrective Action Plans and the requirement of the SA (see Table 1). PDE’s lack of leadership in this matter was further delaying the rights of children with disabilities to be educated in their

neighborhood schools with Supplementary Aids and Services (SAS). Such delay and ineffectiveness undermines the intent and purpose of the SA.

The Policy and Compliance Committee recommended that (a) these Improvement Plans not be accepted as Corrective Action Plans for purposes of implementation of the Settlement Agreement and (b) PDE draft new monitoring protocols that track the requirements of the Settlement Agreement and determine the causes of the district's low ranking on LRE. The protocols must have high face validity (they must clearly and directly measure what is required by the Settlement Agreement) and must be based on several reliable and objective sources of information.

The committee also recommended that PDE use redesigned monitoring protocols to develop CAPs for Year One Tier One school districts.

The panel adopted the recommendations of the Policy and Compliance committee. This meant that the panel has rejected three sets of corrective action plans: Tier 1, Year 1; Tier 1, Year 1 (revised); and Tier 1, Year 2, as not meeting the provisions of the SA.

A fourth set of CAPs (2007-08) was issued by PDE but these were not reviewed by the panel because the matter was now under mediation and the plans were of the same format at the previous three rejected plan years. This mediation concluded with an agreement on February 4, 2009 with respect to the contents and process of the remaining CAPs.

The 2008-09 CAPs were submitted using this February 4, 2009 mediated agreement and were reviewed by the panel. The panel did not accept these plans as meeting the requirements of Corrective Action Plans in the SA as they failed to be responsive to one or more of the February 4, 2009 mediated requirements as described below. The mediated agreement stated that Corrective Action Plans need to:

1. Identify with specificity the actions the district will be required to undertake to correct each violation of substantive LRE requirement.

The plans specified many actions that will be taken but there is little likelihood that the activities taken together, will **correct** the substantive issues. For example, one plan specified fourteen actions most of which are related to training. The plan called for development of a roadmap for increased student participation in general education and an application to become a pilot site focusing on educating children with significant disabilities in the general education classroom. However, it is a matter of conjecture as to whether these measures will correct the substantive issues.

2. What specific SAS will the district develop and put in place to enable students identified as disproportionately placed outside general education classrooms?

All of these plans had training related to SAS but they all relate to general training in the SAS toolkit and/or fact sheet. There is no mention of which specific SAS the districts will develop to meet the specific requirements of the students in more restrictive settings.

3. For each intervention, explain why it has been chosen to correct the identified violation.

There were no explanations provided in any of the actions to correct the identified violations. For example, one SD introduces a bullying program with no explanation. The assumption seemed to be that all issues in LRE should be addressed by general training in LRE and related issues. A small number of plans correlated some interventions with a particular disability category or issue, for example, an issue of emotional support appears to be translated into a need for positive behavioral supports, but there is no statement of explanation for that SD.

4. What specific training, technical assistance, coaching, follow-up and monitoring of outcomes will be provided to support change in practice?

These plans outlined a great deal of general and specific training and assistance including differentiated instruction, co-teaching, the SAS toolkit and general legal issues. However, attendance at trainings, evidenced by sign-in sheets, is not sufficient to show change in learning, practice or impact.

Some plans stated that observation of data trends by school teams and stakeholders will be undertaken to determine if changes are needed to plan activities and that trends are in the desired direction. However, it is an assumption that any improvements in data trends will be the result of training and not other interventions (such as revisions in data gathering, calculations and/or definitions). That is, the quality of the training and participation by attendees and the subsequent change in practices resulting from that training will not be demonstrated by these plans since there is no specified evaluation of training.

5. If training in particular SAS is indicated, what training will be provided and why?

As mentioned in number 2 above, all training in SAS is general.

6. Is the intensity of training and technical assistance sufficient to change practice? Does it move beyond awareness to practice?

These plans contain no stated process to evaluate the impact of the training. If we assume that personnel attend and complete these trainings then we can assume that attendee's awareness has increased. However, in no case will we be able to say anything about the effectiveness of the training to change behavior of the attendees.

LRE data was also requested to review the actual impact that PDE's CAPs were having on LRE in Tier 1 school districts for the first three years of implementation. Data was requested for up to three years of implementation. However, the three-year data provided by PDE omitted cells with numbers (or percentages) of students 10 or less. This made the data very difficult to review because it is not known if a cell contains 0 students of any number up to 10 students. Thus, with four levels of LRE, a SD may have all levels with asterisks in each cell which could mean zero students at all levels, 0 students in three levels and 10 in the fourth level, or any other combination of numbers or percentages. Determining if there has been any improvement in LRE

for that category of disability is thereby extremely difficult if not impossible. It should be noted that the SA does not make any provision for omitting data for student's numbers under 10.

However, it was possible to draw some conclusions.

1. Specific Learning Disability is by the far the category with the most improvement in LRE >80%
2. Speech and Language shows little change but is already close to 100% for all SDs
3. Only 3 out of 20 SDs were able to increase LRE >20% over three years for students with Mental Retardation
4. The majority of disability groups show no significant change in LRE over the life of the Corrective Action Plans

These data are consistent with overall state data that show increasing LRE for groups of students with less severe disabilities such as specific learning disability but very little improvement in LRE for students with more severe disabilities such as mental retardation (see appendix).

(E) Tier Two LRE Monitoring—the “Warning List.” School districts on the warning list will receive a written communication from the Bureau. The communication will warn the district that it is close to the point of being subject to Tier One LRE Monitoring; identify the factors indicating a need for LRE improvement, including an explanation why the data indicated a need for LRE improvement; and state (in words to this effect), “The Department expects you to take the following steps....” Among the steps that will be delineated are the following: (1) Attendance at PDE-sponsored training and technical assistance programs; (2) Acceptance of technical assistance by PDE personnel; and (3) Submission by the school district of a CAP addressing areas identified for improvement.

This provision was not met.

The districts in Tier Two for each year were notified via letter. The letters did not identify specific areas in need of improvement, but alerted districts as to which placement category's data resulted in the identification. In contrast to the strong language of the Settlement Agreement as stated above, the letter states an anticipation on PDE's part that districts will take self-assessment steps including: examining their data to assess and, if necessary, correct data reporting; determining whether there are LRE-related provisions of IDEA in need of improvement; and developing an improvement plan that includes participation in PDE training and acceptance of technical assistance, if the school identifies areas in need of improvement. This category of compliance monitoring has not served the purpose of assessing the educational progress of children with disabilities, as measured by several outcomes, as described in B (1) above.

(F) Tier Three LRE Monitoring—the “Alert List.” School districts on the alert list will receive a written communication from the Bureau. The communication will inform the district that it is in the bottom half of all districts in terms of the LRE data analysis described in Section IV.4(C) of the Settlement Agreement; identify areas in need of improvement; and describe resources available to the district to assist in improvement.

This provision was not met.

The districts on Tier Three for each year were notified via letter. The letters did not identify specific areas in need of improvement, but alerted districts as to which placement category’s data resulted in the identification. The letter referred districts to either their Single Point of Contact (SPOC) or BSE’s data contact as resources. This category of compliance monitoring has not served the purpose of assessing the educational progress of children with disabilities, as measured by several outcomes, as described in B (1) above.

(G) Targeted Monitoring. Targeted monitoring is a selective process used by Bureau personnel to identify a school district based on extenuating circumstances in that particular school year. School districts subject to targeted monitoring are selected based on a referral by a Bureau staff member. Monitoring is confined to a discrete area identified by the staff member.

This provision has not been met.

See IV.4.(2) above.

(H) Regular Cyclical Monitoring. (1) Consistent with federal law and implementing regulations, the Bureau’s regular cyclical monitoring will continue to be conducted as part of PDE’s general supervisory responsibility in accordance with its monitoring obligations to the USDOE. Currently, each school district in Pennsylvania is monitored once every six years to ensure that the district is in compliance with state and federal special education laws and regulations. (2) Regular cyclical monitoring is aligned with existing strategic planning and special education planning at the school district level. Each district completes a strategic plan every six years to address all programs within the district. As described in Section IV.6 of the Settlement Agreement, regular cyclical monitoring is completed the year before the strategic plan is due so that any corrective actions or improvement strategies can be incorporated into the special education and strategic plans. Over the next two years, the strategic and special education plans will be made part of the same process and document. (3) Regular cyclical monitoring focuses on systemic problems within a school district using data analysis, onsite review, and procedural and performance indicators. Following a regular cyclical monitoring visit, data are compiled and a report is sent to the district detailing the results. If deficiencies are identified, the Bureau prepares a CAP and the district is obligated to correct the deficiencies. The Bureau’s compliance division monitors and verifies the district’s implementation of the CAP on an ongoing basis. (4) When a school district in Tier One LRE Monitoring or Tier Two LRE Monitoring is identified for regular

cyclical monitoring, PDE will take the following additional steps as part of the regular cyclical monitoring process: (a) PDE will require the district to provide and analyze data specifically related to LRE, including data on the percentage of students with disabilities educated in regular education classrooms for 80 percent or more of the school day, disaggregated by disability; the percentage of students with disabilities removed from the regular education classroom for 60 percent or more of the school day; the percentage of students with disabilities educated in separate school buildings; and the percentage of students with disabilities educated outside their home district or in programs operated by another educational agency. (b) PDE will examine a representative sample of individualized education plans for the purpose of determining whether the district is satisfying its FAPE and LRE obligations under federal law. (c) PDE will examine district policies and procedures to ensure that a full array of services is available. (d) PDE will require specific staff training for district personnel, designed to target the particular LRE deficiencies identified in compliance monitoring, to assure that the district possesses the skills necessary to meet the needs of diverse learners, including students with significant disabilities, in the regular education classroom.

This provision has been met.

LRE monitoring and regular cyclical monitoring is aligned as proposed. The quality of the Corrective Action/Improvement Plans resulting from monitoring have been reviewed above in section (D) for Tier 1 school districts. Details of special education plans are available on the PDE website.

Sanctions for Noncompliance. A school district that fails to honor the commitments and obligations contained in a CAP (whether the plan be to rectify deficiencies identified through LRE monitoring, targeted monitoring, or regular cyclical monitoring) will be subject to the following sanctions and enforcement powers: (1) A mandatory meeting with PDE in Harrisburg in which the superintendent and chair of the school board will be obligated to participate. (2) Appropriate sanctions as set forth in PDE's "Basic Education Circular" on enforcement, including the withholding of funds from the school district and redirecting those funds to the appropriate body to support specific expenditures (e.g., hiring personnel) to implement the action required. (3) If appropriate, the initiation of professional disciplinary action against the superintendent or others whose conduct is found to have resulted in the school district's failure to meet its obligations under the CAP.

The Panel is not aware of PDE imposing any sanctions of school districts for noncompliance with CAPS to correct deficiencies identified through any type of monitoring.

IV.5. Complaint Resolution

(Preamble) PDE will build upon and modify its present system of complaint investigation and resolution in the following respects: (A) Whenever a parent or student submits a complaint to the Bureau, PDE will, without exception,

investigate the complaint. If PDE determines that the complaint was timely filed and that it has jurisdiction to investigate the complaint (see 34 C.F.R. §300.662), then PDE will not resolve the complaint without using its best efforts (i) to interview the parent or student, and (ii), if the complainant identifies persons alleged to have actual knowledge of the facts, to interview a reasonable number of such persons.

This provision has not been met.

The Panel has requested and been denied complaint investigation reports. Without this data, it cannot assess implementation of IV.5(A) of the SA.

(B) When the complaint resolution process results in a finding by PDE that a school district has violated an individual student's right to receive supplementary aids and services in a regular education class, or where such a violation has been established after a due process hearing, PDE will investigate during the district's next compliance monitoring whether the district has corrected the violation, not only for the student who was the subject of the complaint but for similarly situated students.

This provision has not been met.

The Panel has requested and been denied complaint investigation reports. Without this data, it cannot assess implementation of IV.5(B) of the SA.

IV.6. Plan Approval

(Preamble) PDE will build upon and refine its present system of review and approval or disapproval of special education plans submitted by the 501 school districts in Pennsylvania as follows: (A) Where results of compliance monitoring demonstrate failure to provide special education students with meaningful educational benefit or with supplementary aids and services in regular education classes and neighborhood schools to the maximum extent appropriate, PDE will require school districts' special education plans to include appropriate corrective action, which may include development of appropriate training and customized technical assistance plans.

This provision has not been met.

The special education plans of districts identified as Tier One for the 05-06 School Year were reviewed by the Panel's LRE Practices Committee. Although the PDE Implementation Workplan of September 2009 reports "that plans are amended, as needed, to incorporate corrective action on an on-going basis", the panel is not aware of special education plans being changed as a result of compliance monitoring.

(B) By no later than one year following the effective date of the Settlement Agreement, PDE's special education planning cycle will be synchronized with the compliance monitoring cycle in at least 50 percent of Pennsylvania school districts so that planning follows monitoring and the district's special education plan addresses the findings of compliance monitoring; and by no later than two years following the effective date of the Settlement Agreement, PDE's special education planning cycle will be synchronized with the compliance monitoring cycle in at least 90 percent of Pennsylvania districts so that planning follows monitoring and the district's special education plan addresses the findings of compliance monitoring. It is PDE's goal to achieve, by no later than three years following the effective date of the Settlement Agreement, synchronization of the planning and monitoring cycle in 100 percent of Pennsylvania districts.

This provision has not been met.

In December 2007, PDE has presented a plan of synchronization for the special education planning cycle and compliance monitoring but the panel is not aware of actual synchronization.

IV.7. Training

(A) In furtherance of the mutual goals described in Section III of this Agreement, the Bureau will provide on-site training, technical assistance and professional development to school districts for the purpose of building local capacity in providing individualized supplementary aids and services in regular education classrooms to students with disabilities to enable them to be educated in regular education classrooms to the maximum extent appropriate. Services provided by the Bureau will be based on the needs of school district and intermediate unit personnel, on research-based practices, and on the assessment referenced in Section IV.2(L) of the Agreement.

This provision has been met minimally.

According to a report from the Training and Technical Assistance Committee, on-site training has been provided to 10 school districts in 13 visits. In April 2007, training conducted by Richard Villa and supported by the Intermediate Unit Training and Consultation (IU TaCS) personnel and PaTTAN staff, was provided through the Alvernia Inclusion Symposium. It was reported that on-going training, technical assistance and professional development is delivered to districts by PaTTAN, IU TaCS, and university personnel (Arcadia, Alvernia, Duquesne and Temple). However, to date, the Committee has not received specific information as to numbers, audience composition or most importantly, outcomes of these trainings. The PEAL Center and the Arc of Pennsylvania were funded as providers of awareness level workshops for parents, families, and educators. To date, outcome data has not been provided.

The AP attended a videoconference with Dr. Richard Villa. Dr. Villa shared the scope of his work in relation to LRE Improvement: District Supports for Inclusive Practices. School-based teams joined Dr. Villa for a 2 day presentation on the "What", "Why", and

“How” of Inclusive education. Site Visits with Dr. Villa are part of the training. Site Visits include classroom observations and coaching.

During 2007-08, Dr. Villa spent 49 days in Pennsylvania this which included: presentations, site visits with Tier 1 schools, presentations at the Hershey conference and a Video conference (PaTTan-Pittsburg/Harrisburg/King of Prussia, Northwest Tri-County IU 5, Coudersport ASD-Elementary, Luzerne IU 18, and Colonial IU 20.)

However, the Panel has not seen data reflecting the effectiveness of the training nor its impact on LRE. Most of these activities are introductory only and likely to have little impact in developing local capacity for school inclusion.

Missed Opportunity With Dr. Villa

During his more than 80 days of consulting and training in Pennsylvania for Tier one schools Dr. Villa was able to identify several substantive barriers to inclusion in Pennsylvania which he presented to PDE and the advisory panel at the June, 2008 meeting. He noted that these barriers are by no means unique to Pennsylvania.

These barriers include

- (a) Tradition, attitudes and lack of awareness of inclusion
- (b) An education system that is not conducive to new methods of education such as fixed curriculum, traditional teaching methods, existence of separate schools and institutions and inadequate pre-service and in service teacher education
- (c) Challenges to collaboration and cooperation’s between the professions and government agencies
- (d) Current policy, procedures and structures
- (e) Poor administration and inconsistent enforcement at the local level

Dr. Villa went on to state that complex change takes 5-7 years to achieve and that there needs to be a clear vision of the change desired, skills, incentives, resources for change needed and an action plan.

Dr. Villa prefaced his presentation with the statement that he was used in a purely reactive manner in Pennsylvania, namely providing TTA to school districts already identified as struggling with LRE issues. He stated that in New Mexico he was used in a pro-active manner in which the state of New Mexico set a goal of being within 5% of the national average with respect to LRE within 5 years—a goal they came very close to achieving.

Dr. Villa could have been used in a pro-active manner in Pennsylvania. The presence of a Settlement Agreement relating to increasing LRE in Pennsylvania was an excellent opportunity to use such a nationally known expert (or another similar consultant) to assist in achieving the outcomes specified in the SA. The fact that this was not done illustrates PDE’s preference for ad-hoc TTA activities for specific school districts at the expense of systemic change efforts.

Lack of Collaboration on Inclusion DVD

The approach PDE took in developing their DVD “*Inclusive schools: Learning...Working...Achieving together*” (June, 2008) illustrates the lack of

collaboration with the AP. The idea of a widely distributed DVD on inclusion in Pennsylvania was supported by the panel (March 2008) and would make an excellent change agent tool. The panel, however, strongly recommended that PDE not develop a DVD on its own but collaborate with panel members. Several panel members are well aware of the difficulties in producing DVDs on any subject let alone one on inclusion with so many widely differing perceptions about what inclusion is and is not.

Nevertheless, PDE chose to develop, copy and distribute a DVD independently of the panel. This DVD was revealed to the panel in final form at the June, 2008 panel meeting. Despite some positive comments, panel members believed that a much better DVD could have been created by addressing the following.

- (a) Including interviews with students with disabilities in the DVD rather than only interviewing non-disabled students about students with disabilities
- (b) Including references to evidence-based practice in the DVD. "Evidence-based practice" is an education mantra but is conspicuously absent from the DVD giving the impression that inclusion is purely a moral issue of "Doing the right thing" and "giving it a chance"
- (c) Describing regulations relating to LRE as positive rather than as "burdens" and "necessary evils"
- (d) Including captioning and audio description to ensure accessibility

Despite statements from Mr. Tommasini that there would be revisions to the DVD, the panel has no knowledge of any pending revisions. There has been no evaluation of the DVD's use, change in knowledge and practice, nor impact on LRE.

The Advisory Panel will review and recommend specific content, delivery systems, and evaluation processes and will assist in developing a plan for delivering technical assistance and training to respond to the needs identified in the objective assessment referenced in Section IV.2.(L) of the Settlement Agreement, which the Bureau will implement. The following components will become part of the delivery plan for training, technical assistance and professional development:

- (1) Training school district staff to provide supplementary aids and services in regular education class to students with significant disabilities, including those with significant learning disabilities, retardation, autism, emotional disabilities, physical disabilities and multiple disabilities.**
- (2) Training and technical assistance in research-based practices and specialized interventions for students with significant learning disabilities, retardation, autism, emotional disabilities, physical disabilities and multiple disabilities.**
- (3) Assistance in the development and delivery of customized, sustained technical assistance plans.**
- (4) Joint training of school district staff and families in the use of supplementary aids and services in regular education class for students with significant disabilities, including significant learning disabilities, retardation, autism, emotional disabilities, physical disabilities and multiple disabilities.**

- (5) Assistance in developing collaborative teamwork in the provision of supplementary aids and services in regular education class to students with significant disabilities.**
- (6) On-site technical assistance and consultation in response to requests from parents.**
- (7) Resources on inclusive and research based practices available to families via a website along with other resource materials.**
- (8) A mini grant program under which PDE would set aside money to make discretionary grants to fund school district initiatives that use training and technical assistance to overcome gaps in knowledge and skills identified by the assessment referred to in Section IV.2(L) of the Agreement. A school district would not be eligible to apply for or receive a mini grant until the district completed the assessment to identify gaps in knowledge and skills, thereby recognizing school district and parent commitment in exchange for additional resources.**
- (9) Collaboration with higher education to address student teaching, induction and mentoring processes that build capacity of each school or local educational agency and begins the development of a master teacher network to address ongoing needs for maintaining inclusion related programs.**
- (10) Training in effective advocacy services for children with disabilities and their families.**

This provision has not been met.

The Panel provided initial recommendations for content and delivery systems of training and technical assistance in August 2006. Panel suggestions are incorporated as training is designed and delivered. An outline of a training framework was reported at June 2007 quarterly meeting and a comprehensive report of T & TA was provided to the panel at the June 2007 quarterly meeting.

Needs assessments, facilitated by IU and PaTTAN staff, assist school districts with identifying strengths and areas of need related to LRE. Tier 1 school districts and those school districts seeking mini grants must use the needs assessment. Ongoing support is provided in the implementation of school district action planning for LRE Improvement. There is not data do demonstrate how, by whom, and any outcomes of its use to demonstrate that the Needs Assessment has had any effect on improved capacity in LRE-related school practices.

The panel did not receive raw data from any needs assessments despite repeated requests dating from September 25, 2008. The panel did receive summary data from needs assessments but this was judged by the panel to be insufficient for purposes of review and reporting.

An Inclusive Practice Module, developed and utilized by PaTTAN and IU consultants, addresses Supplementary Aids and Services. Customized training provided for student focused teams and school district staff as part of LRE improvement activities will be granted upon request. The SAS toolkit was piloted within multiple LEA's during the spring of 2008. Information regarding the results of the pilot and how it will be utilized has not been received by the panel. Training sessions for SAS toolkit were as follows:

IU 13 June 2008; Low Incidence Conference-August 2008; and PASCD Conference-November 2008. In addition, training modules focused on leadership, curriculum modification, co-teaching, SAS consideration and accessing the general education curriculum have been developed by PaTTAN. No data including output, outcome or impact evaluation has been provided to the Advisory Panel. As such, there is no evidence that any of these trainings have resulted in improved knowledge and practice related to LRE (outcomes), nor is there any data to support that this training has had any impact on the educational placement or the provision of necessary supplementary aids and services to students with disabilities in Pennsylvania.

The Inclusive Practice Evidence Based Self-Assessment tool was developed based on the review and research of the practice in this field. The PaTTAN system provided a variety of professional development that addresses research-based strategies for students with significant disabilities. PDE/BSE, PaTTAN and IU consultants continue to assist in developing plans to provide professional development and TA. No outcome or impact evaluation data has been provided to the Advisory Panel. As such, there is no evidence that any of these professional development activities have resulted in improved knowledge and practice related to LRE (outcomes), nor is there any data to support that these professional development activities have had an impact on the educational placement and the provision of necessary supplementary aids and services to students with disabilities in Pennsylvania.

PDE provided joint training for staff and families with Office of Special Education Programs. Other opportunities include: PEAL March 2007-2009; C2P2 Inclusive Education 06-09; Pittsburgh Public Schools Summer Institute, August 2006-2009; Arcadia Inclusion Institute, June 2006-2008. No outcome or impact evaluation data has been provided to the Advisory Panel for any of these training initiatives. As such, there is no evidence that any of these trainings have resulted in improved knowledge and practice related to LRE (outcomes), nor is there any data to support that this training has had an impact on the educational placement or the provision of necessary supplementary aids and services to students with disabilities in Pennsylvania.

PDE, PaTTAN and IU consultants support schools and families in the topic of collaborative teamwork. Resources are included on PaTTAN and PDE websites. Funding is provided by PDE in order to disseminate information to parents about training opportunities and materials. Fact Sheets are available at no charge.

Mini-grants have been awarded to 98 SD's in 2007-08 and \$1.5 million allocated. Once again, there has been no evaluation of outcomes or impact of mini-grants on LRE.

However, the activities of PDE with respect to increasing LRE in Pennsylvania fall far short of a Plan that addresses all 10 components required by the SA. This provision became the subject of mediation for over 12 months. Mediation concluded in November, 2009 with the following outcome. PDE will contract with the Arc of Pennsylvania to provide a Kindergarten/First grade statewide training and technical assistance initiative. A contract was signed with the Arc of Pennsylvania in January, 2010.

Finally, in September 2009 PDE initiated a series of training initiatives that include: (1) Significant Disabilities Pilot project, (2) a leadership training for school principals, (3)

Including LRE in the development of PDE's Standards Aligned System, (4) Development of a Master Teacher Network, (5) Development of a parent booklet, (6) Revising the Inclusive Practices in Secondary Transition Folders and (6) Using Data to Guide Implementation of LRE Opportunities.

At the request of PDE, input from the Advisory Panel was provided to each of these initiatives. At the writing of this final report and as the 5-year Settlement Agreement reaches its end, some of these trainings have occurred while others are still being developed by PaTTAN. Once again, no outcome or impact evaluation data (or evaluation plans for same) have been provided to the Advisory Panel for any of these planned or extant training initiatives. As such, there is no evidence that any of these trainings have resulted in or will result in improved knowledge and practice related to LRE (outcomes), nor is there any data to support that these training initiatives have had (or will have) an impact on the educational placement or the provision of necessary supplementary aids and services to students with disabilities in Pennsylvania. Also, given the lateness of these initiatives the panel will have very little input into their development other than advising in the earliest stages.

IV.8. Advocacy

(A) As part of their effort to promote the goal of providing trained, informed and effective advocacy support to parents on issues relating to the provision of specially designed instruction to students with disabilities in the least restrictive environment including the laws and regulations that govern the provision of special education services in the least restrictive environment, the plaintiffs have informed PDE of their intention to prepare a grant proposal and seek funding for a program or programs serving that purpose. If, during the life of the Settlement Agreement, plaintiffs' counsel presents such a grant proposal to PDE for consideration in accordance with this paragraph, then PDE agrees to review the grant proposal. If PDE determines that the grant proposal is consistent with PDE obligations, priorities, and goals and does not jeopardize the likelihood of funding for or compete with PDE's own grant proposals, then PDE will prepare a letter or other written communication supporting such grant proposal and will take such other reasonable steps to assist plaintiffs' counsel in obtaining such grant as plaintiffs' counsel will request. If, after review, PDE determines in good faith that the grant proposal is inconsistent with PDE obligations, priorities, and goals or would jeopardize the likelihood of funding for or compete with its own grant proposals, and that therefore it cannot support the grant proposal, then PDE will inform plaintiffs' counsel in writing of its determination and the reasons therefore.

Plaintiffs have not prepared a grant proposal as described in this section.

IV.9. Financial Terms

The financial terms of the Settlement Agreement have been met.

IV.10. Enforcement and Other Terms

PDE has provided plaintiff's counsel with written certifications and plaintiff's counsel has responded. The Plaintiffs invoked the terms of enforcement in April, 2007. The parties (PDE, Plaintiffs and Plaintiff Organizations) were involved in formal mediation as outlined in IV.10.(5) of the Settlement Agreement from December 2007 through November, 2009.

CONCLUSION BROKEN PROMISE

*As the weeks and months went by, we realized we were the victims of a broken promise.
Martin Luther King, Jr., Letter from a Birmingham Jail, 16, April, 1963*

This Settlement Agreement provided PDE with a powerful opportunity and many useful tools to increase LRE in Pennsylvania. This opportunity was not utilized to its potential. The promise of this settlement agreement was broken in two senses, firstly, the promise to implement the agreement was only minimally met, and secondly, the promise of significantly increased numbers of students educated in the least restrictive environment in their neighborhood schools inherent in the vision of this settlement agreement was not realized.

The panel's conclusions are as follows.

1. An overall improvement in LRE masks a lack of improvement in LRE for students with moderate and severe disabilities

With respect to overall LRE, Pennsylvania's national status changed from 49th in 2005 (www.ideadata.org) to 43rd (www.PaTTAN.net). Approximately 58% of **all students with disabilities** (see appendix) are being educated in regular education classes for more than 80% of the day in 2009-10. There was an increase in regular education placement for more than 80% of the day by 14% from pre-Gaskin to 2009-2010. However, we do not know if this educational placement is in the neighborhood school nor do we know the degree to which needed services and supports are being provided. However, these overall data are highly inflated by the data for the high incidence category **speech or language impairment** which is 15% of the total population of students with IEPs (see Table 4). This category has had an LRE percentage of 98% for 80% or more of the school day for the entire life of the SA.

It is disappointing that the overall percentage of students in **other settings** (approximately 4%) has not changed over the life of this SA. Other settings include approved private schools (day and residential); public and private facilities (day and residential); in home placement; correctional facilities; hospital and homebound; and out of state facilities.

A much more accurate picture of changes in LRE in Pennsylvania may be gained by looking at the data for specific disability groups. For example, the categories of mental retardation, multiple disabilities, hearing impairment, orthopedic impairment, visual impairment, and deaf-blindness show minimal or negative changes in LRE (for 80% or more of the school day) over the life of the Settlement Agreement. This is another disappointing result since the Settlement Agreement was directed at benefiting all disability groups.

Approximately 59% of **students with specific learning disabilities** are being educated in regular education class for a minimum of 80% of the time during the final year of the Gaskin Settlement agreement. Improvement in LRE is approximately 19% from pre-

Gaskin figures to 2009-2010. However, we do not know if this educational placement is in the neighborhood school nor do we know the degree to which needed services and supports are being provided.

For the purpose of the following analyses, the remaining categories represent low incidence disability populations such as hearing disabilities/deafness, TBI, visual impairment including blindness, deaf-blindness or students with disabilities such as autism, intellectual disabilities, multiple disabilities, or emotional disabilities.

At the end of the Gaskin SA, less than 40% of students with **autism** are being educated in regular education classes for more than 80% of the day. This is an improvement of approximately 16% from pre-Gaskin to 2009-2010 data. However, we do not know if this educational placement is in the neighborhood school nor do we know the degree to which needed services and supports are being provided. There was no change in use of other settings.

Approximately 23% of students with **deaf-blindness** are being educated in regular education classes for more than 80% of the day. This represents a **decrease** of approximately 7% from pre-Gaskin to 2009-2010 data. Again, we do not know if this educational placement is in the neighborhood school nor do we know the degree to which needed services and supports are being provided. There was an **increase** in out of district settings of approximately 16% with about 54% of students receiving their education in other settings.

Approximately 40% of students with **emotional disturbance** are being educated in regular education classes for more than 80% of the day. This represents an improvement of approximately 16% from pre-Gaskin 2009-2010 data. However, we do not know if this educational placement is in the neighborhood school nor do we know the degree to which needed services and supports are being provided. There was a very minimal (1%) decrease in use of other settings with approximately 19% being educated in other settings.

At the end of the Gaskin SA, less than 63% students with **hearing impairments, including deafness**, are being educated in regular education classes for more than 80% of the day. This represents an improvement of approximately 7% from pre-Gaskin to 2009-2010 data. However, we do not know if this educational placement is in the neighborhood school nor do we know the degree to which needed services and supports are being provided. There was no change in the use of other settings (approximately 15%).

For students with **intellectual disabilities (mental retardation)** only 13% are being educated in regular education classes for more than 80% of the day. This represents a small increase (4% over five years) from pre-Gaskin to 2009-2010 data. Again, we do not know if this educational placement is in the neighborhood school nor do we know the degree to which needed services and supports are being provided. Unfortunately there was an **increase** in out of district settings of approximately 3% with about 9% of students receiving their education in out of district settings.

For students with **multiple disabilities**, only about 5% are being educated in regular education classes for more than 80% of the day. This percentage has not changed over the life of the Settlement Agreement. Again, we do not know if this educational placement is in the neighborhood school nor do we know the degree to which needed services and supports are being provided. There was an **increase** in use of other settings of approximately 5% over the life of the SA with about 33% of students receiving their education in other settings in 2009-10.

Only 40% of students whose primary disability is **orthopedic** are being educated in regular education classes for more than 80% of the day. This is an improvement of approximately 13% from pre-Gaskin to 2009-2010 data. However, we do not know if this educational placement is in the neighborhood school nor do we know the degree to which needed services and supports are being provided. There was a decrease in out of district settings of approximately 4% with about 7% of students receiving their education in out of district settings in 2001-10.

At the end of the Gaskin SA, less than 60% students with **other health impairments** are being educated in regular education classes for more than 80% of the day. This represents an improvement of approximately 13% from pre-Gaskin to 2009-2010 data. However, we do not know if this educational placement is in the neighborhood school nor do we know the degree to which needed services and supports are being provided. There was no change in use of other settings (approximately 2%).

At the end of the Gaskin SA, only 35% students with **Traumatic Brain Injury** are being educated in regular education classes for more than 80% of the day. This represents an improvement of approximately 19% from pre-Gaskin to 2009-2010 data. However, we do not know if this educational placement is in the neighborhood school nor do we know the degree to which needed services and supports are being provided. Additionally, there was a decrease by 4% in placement in other settings.

At the end of the Gaskin SA, 62% of students with **visual impairments including blindness** are being educated in regular education classes for more than 80% of the day. This represents an improvement of only 2% from pre-Gaskin to 2009-2010 data. Again, we do not know if this educational placement is in the neighborhood school nor do we know the degree to which needed services and supports are being provided. There was an **increase** in use of other settings of about 4% with about 21% of students being educated in other settings in 2009-10.

If we ask how long will it take, at current rates of change in Pennsylvania, for 80% of students with disabilities to be included 80% or more of the time in regular education we can conclude the following.

1. Students in the category Deaf-Blind will NEVER reach that goal since inclusion 80% or more is declining (9%) over the life of the SA
2. Students in the category Multiple Disability will NEVER reach that goal since inclusion 80% or more is the same at the end of the SA as it was the year before the SA (5%)
3. Students in the category Mental Retardation will take 84 more years to reach the goal

4. Students in the category Visual Impairment will take 45 more years to reach this goal
 5. Students in the category Orthopedic Impairment will take another 16 years to reach this goal
 6. Students in the category Autism will take another 14 years to reach this goal
 7. Students in the category Emotional Disturbance will take another 12 years to reach this goal
 8. Students in the category Hearing Impairment will take 12 more years to reach this goal
 9. Students in the category Traumatic Brain Injury will take another 12 years to reach this goal
 10. Students in the category Other Hearing Impairment will take another 8 years to reach this goal
 11. Students in the category Specific Learning Disability will take another 6 years to reach this goal
 12. (Students in the Speech or Language category already exceed this goal)
2. Most provisions of the SA were not met

Table 2 presents the conclusions of the panel as to which provisions were met, met minimally or partially, or not met. Provisions that were met included development of posters, the Supplementary Aids and Services Toolkit, and the Needs Assessment, all of which relate to increasing awareness of disability or resources available to consider LRE. Also addressed were provisions relating to maintaining the IEP format and development of a single plan.

The majority of provisions, including those relating most clearly to regulation and enforcement, were met minimally or were considered by the Panel not to have been met. This included major provisions relating to LRE monitoring and corrective action plans for the most segregated school districts in Pennsylvania and the development of a comprehensive training and technical assistance plan for the commonwealth. This is a very disappointing and frustrating conclusion of the Panel which, instead of monitoring and advising on implementation of the agreement spent most of its time monitoring non-implementation.

Many opportunities to implement change over the life of this SA were not taken. The following relatively easy actions could have been taken by PDE but were not:

- a. Dr. Villa, a nationally recognized expert on inclusion, could have been given a proactive rather than reactive role in Pennsylvania
- b. PDE could have set a realistic but meaningful goal for increasing LRE over 5 years that could have focused the commonwealth's efforts. PDE has consistently refused to develop a vision or a goal for LRE in Pennsylvania under the SA.
- c. PDE could have developed strong Corrective Action Plans and a system of target monitoring backed up by the enforcement provisions of the SA. Instead, plans for correction could be more accurately described as plans to write plans for self-correction.
- d. PDE could have coordinated an early childhood initiative in their activities instead of contending that pre-school is covered by other departments

- e. PDE could have addressed the role and funding of intermediate units and other non-neighborhood school settings in perpetuating segregation in Pennsylvania
 - f. PDE could have developed a comprehensive training and on-site technical assistance plan based on needs assessments. This could have had far-reaching impact on education in the commonwealth.
3. There remains substantial disagreement between PDE and Panel members on key issues of LRE

PDE refuses to believe that there is a serious problem with LRE in PA whereas the panel believes that the problem is significant and systemic. PDE believes that LRE is a matter of considering options with a view to increasing opportunities for LRE whereas the Panel sees LRE and inclusion as a civil right that cannot be “considered away.” PDE believes that LRE is best handled via training, technical assistance and resource development and best delegated to Pennsylvania Training and Technical Assistance Network. The Panel however, believes that there is a significant role to be played in relation to enforcement, vision, leadership and systematic planning and intervention that is best and necessarily the function of PDE. PDE has failed to show it has a vision for LRE in Pennsylvania or the leadership and political will to engage in the necessary systems change that this would entail.

This difference was evident early in the life of the agreement. In December 2008 the panel recommended that PDE adopt six priorities for the remainder of the SA. (see Table 3). These priorities were ignored by PDE at the time stating that while the priorities were very worthwhile PDE would nevertheless stay on its course to implement its workplan based on the provisions of the SA. Less than one year later, in July 2009, the panel recommended four initiatives to salvage the Settlement Agreement (a) an initiative to make sure that first graders begin their education in the least restrictive environment possible, (b) a high school initiative to make sure that LRE does not disappear in upper grades, (c) a family training initiative, and (d) an overhaul of the statewide system of training and technical assistance with respect to LRE. At that time PDE chose to take two of the Panel’s suggestions. The Kindergarten/First Grade priority was reinterpreted as a small training and technical assistance initiative and part of its obligations under the Section IV.7 of the SA to develop a comprehensive training and technical assistance plan. The panel’s most segregated populations priority was turned into a small Significant Disabilities training and technical assistance project with PaTTAN.

4. Data relating to the two provisions most relevant to assessing the benefit of education being received were denied to the panel

A major goal of the SA was not just to increase placement of students in regular education but to increase the meaningful benefit of such placement. Two provisions were directly related to assessing benefit: reviewing IEPs and reviewing complaints. PDE refused to provide the panel with the samples of IEPs it requested except for a one-time random sample of 50 IEPs. This sample size is so small as to preclude making any generalizations to the 250,000 IEPs in Pennsylvania. An analysis of the

complaints received from parents through the Department's office of Compliance was not possible since PDE refused to provide these documents to the panel.

5. Prolonged mediation between PDE, plaintiffs and some panel members, had negative effects on implementation and operation of the panel

Over two years of mediation with two separate mediators ran the clock down for implementation since matters being mediated were not discussed at panel meetings. Confidentiality agreements severely reduced communication between panel and mediation parties on matters of mutual interest. This dynamic interfered with transparency in panel meetings since it was impossible to tell if panel discussions were being influenced by parallel discussions in mediation. The fact that more than two years of this settlement agreement were spent in mediation arguing about the terms and definitions of an agreement that was itself the result of many years of litigation shows that very little in this settlement agreement was indeed settled at the time it went into effect on September 19, 2005.

6. The timeline of this Settlement Agreement was cut short

The Agreement was to include five years of implementation. The first meeting of the Advisory panel occurred in December, 2005. At the September 2009 meeting, just prior to adjournment, BSE announced the meeting dates for the final year (2010). The dates given omitted a meeting in September 2010. For four years it had been assumed by the panel that the final meeting would be in September, 2010 since the SA was signed in September, 2005 and was for a five-year period. This would have given ample time to review additional data and monitor progress on implementation. Moreover, it was assumed that the final report would cover as much of the five-year period as possible.

On October 18, 2009 the panel wrote to the Bureau Director requesting a meeting in September 2010 due to the fact that much work needed to be done and that BSE had expressed a desire for optimal transition to a post Gaskin environment. The Bureau Director replied that he would give his decision in due time. At the March 2010 panel meeting Mr. Tommasini communicated to the panel that there would not be a meeting of the panel in September 2010 but that individual panel members were invited to attend a dinner with the keynote speaker of the statewide conference taking place in September, 2010.

The lack of a September 2010 meeting and the fact that PDE did not participate in the June, 2009 meeting had the effect of significantly reducing the implementation time of this agreement.

Finally, it is interesting to note that the panel's first Implementation Report concluded with the following recommendations:

As we move forward with implementation, the Panel urges the Department's attention to and consideration of the following beliefs:

- *The achievement of real systems change must rely less on self-monitoring and self-prescription of remedy by school districts. Imposition of sanctions for non-compliance with corrective action and failure to implement improvement plans must be a reality.*
- *The panel must be acknowledged in their role as preeminent advisor on implementation, as evidenced by timely consultation on LRE-related policies and practices, provision of requested data, and earnest consideration and substantive implementation of those recommendations endorsed by the Panel.*
- *The Pennsylvania Department of Education must champion a vision of inclusive education that encompasses all bureaus and divisions within the Department, effectuates consistency in policy and practice, and eliminates systems barriers between regular and special education in a model of integrated community support and effective practice.*

The fact that these recommendations are still valid at the end of the SA is testimony to its lack of implementation by PDE.

The Bureau has stated repeatedly that it is looking past the SA timeframe and that PDE will be thinking about LRE long after the panel is dissolved. This statement is meant to be reassuring to panel members. Unfortunately, this panel cannot place much confidence in such a sentiment given the facts outlined in this report.

At the June 3, 2010 meeting, the panel decided to make some final recommendations to PDE. These are outlined in Appendix 1.

Figure
Number of Improvement Plan Activities by Theme

Training (80)	XX
Goals (26)	XXXXXXXXXXXXXX
New Models & Programs (22)	XXXXXXXXXXXX
Further Data Gathering (21)	XXXXXXXXXXXX
Procedures (16)	XXXXXXXXXX
Develop a Plan (12)	XXXXXX
Resources (10)	XXXXXX
Parents Networks (10)	XXXXXX
Scheduling (5)	XX
Supports (5)	XX
Other (4)	XX
Vision/Mission (3)	X
Statements (3)	X
Leadership (2)	X

Table 1
Contrast Between PDE and Panel Regarding LRE Monitoring

MONITORING	BUREAU OF SPECIAL EDUCATION	SETTLEMENT AGREEMENT
DESCRIPTION	Corrective Action & Verification /Improvement Plan	Corrective Action Plan
PURPOSE	Monitoring for compliance and improvement	LRE monitoring
PLAN COMPONENTS	<p>Discovery and address of specific, discrete compliance issues</p> <p>Specific and discrete activities are outlined to remedy issues of non-compliance e.g., document and track meeting invitations; attendance at trainings</p> <p>IEP invitations mailed in a timely manner</p> <p>Regular education classes with SAS are considered</p> <p>Training occurs on a regular basis</p>	<p>Discovery and address of underlying and systemic causes of LRE problems</p> <p>A multi-year comprehensive plan of correction with goals, monitoring, specific training and enforcement addressing, for example</p> <p>Effects of historic systems of segregation on LRE</p> <p>Resistance by teachers to LRE</p> <p>Financial investments in alternative education settings leading to resistance to LRE</p>
GOAL	Remediation of specific compliance issues	Increasing LRE in Pennsylvania
TRAINING	Gently expose School Districts to new ideas regarding LRE via teleconferences, guest speakers, field trips and other activities	Develop specific training that matches the needs and goals of the Corrective Action Plan

Table 2
Levels of Implementation of Settlement Agreement

Level Implementation	Area of Focus		
	Regulation/Enforcement	Training/Awareness	Other
Provisions met	IEP format (IV.3(A-E)) Single Plan (IV.1(C)) Regular Cyclical Monitoring (IV.4 (A) (1)(H)) LRE Index (IV.4(C)(H))	Posters (IV.1(E)) SAS Tool Kit (IV.1(D)) Privacy of Data (IV.2(J)) Needs Assessment (IV.2(L))	Advisory Panel (IV.2 (A-D)(F), (G)) Financial terms (IV.9) Enforcement and Other Terms (IV.10)
Provisions met partially			Advisory Panel Support (IV.2 (K))
Provisions met minimally	HIPPA conformity (IV.2(J)) Data provision (IV.2 (E), (H) & (I)) Overview (IV.4(B)(2))	Exemplary programs (IV.1(M)) On-site TTA (IV.7(A))	
Provisions not met	Requiring adherence to Oberti (IV.1(A)) Memorandum Of Understanding (IV.1(B)) Provision of Data (IV.2(H), (I)) LRE Monitoring (IV.4(A)(3)) Target monitoring (IV.4(A)(2); & IV.4(G)) Overview (IV.4(B), (D))(1) Tier 1-3 Monitoring (IV.4(D-F)) Complaint Resolution (IV.5) Plan approval (IV.6)	TTA Plan (IV.7(A))	

Table 3
Contrast Between Panel Priorities and PDE Initiatives

Panel <i>Priorities</i> (December 2008)	PDE <i>Initiatives</i> (June, 2009)
Comprehensive statewide TTA plan and model system of training	
Increasing the quality of IEPs in PA	
Increasing LRE in kindergarten and First Grade when available	<i>Include Me From the Start</i> (Kindergarten/First grade Training & Technical Assistance Project)
Ensuring LRE through a student's career	
Increasing LRE using the corrective action process	
Increasing LRE for the most segregated populations (e.g., mental retardation, multiple disabilities, emotional disabilities)	Significant disabilities Training & Technical Assistance Project
	Including LRE in development Standard Aligned System
	Leadership training for school principals
	Master Teacher Network (already in SA)
	Parent Booklet Development
	Including Inclusive Practices in Secondary Transition Folders
	Using Data to Guide Implementation of LRE Opportunities

Table 4
Disability Category Child Count
December 1, 2009

DISABILITY	AGE 6-21 YRS	PERCENT
MENTAL REATRDTION	20,945	8
HEARING IMPAIRMENTS	2,595	1
SPEECH OR LANGUAGE IMPAIRMENT	39,643	15
VISUAL IMPAIRMENT	1,069	0
EMOTIONAL DISTURBANCE	24,149	9
ORTHOPEDIC IMPAIRMENTS	800	0
OTHER HEALTH IMPAIRMENTS	21,272	8
SPECIFIC LEARNING DISABILITY	134,525	51
DEAF-BLINDNESS	60	0
MULTIPLE DISABILITIES	2,718	1
AUTISM	15,871	6
TRAUMATIC BRAIN INJURY	693	0
DEVELOPMENTAL DELAY	69	0
TOTAL	264,409	100%

Source: www.penndata.hbg.psu.edu

Table 5
TIER 1 SCHOOL DISTRICTS
2005-2009

2005

Avonworth
Bensalem Township
Bethlehem-Center
Bristol Borough
Bristol Township
Carbondale Area
Chester-Upland
Coatesville Area
Duquesne City
East Allegheny
Erie City
Greater Nanticoke Area
Greenville Area
Norristown Area
Philadelphia City
Reading
Washington
Williamsport Area
Wilkesburg Borough

2006

Brentwood Borough
Charlertoi
Clairton City
Connellsville Area
Coudersport Area
Greater Johnstown
Lebanon
Millcreek Township
Northern Potter
Pittston Area
Pottstown
Pottsville Area
South Western
Steelton-Highspire
Sto-Rox
Union City Area
William Penn
Woodland Hills

2007

Abington
Allentown City
Altoona Area
Bangor Area
Berwick Area
Bethlehem Area
Big Spring
Chambersburg Area
Columbia Borough
Cornell
East Stroudsburg Area
Harrisburg City
Johnsonburg Area
Mount Union Area
Pocono Mountain
Shenandoah Valley
Southeast Delco
Southeastern Greene
Steel Valley
Upper Dauphin Area
Williams Valley
Wilson Area
Wyoming Valley West

2008

Big Beaver Falls Area
Blue Ridge
Catasauqua Area
Central Dauphin
Farrell Area
Hazelton Area
Jeannette City
Minersville Area
Northern Lebanon
Northern Tioga
Oswayo Valley
Penn-Trafford
Penn Hills
Penns Manor
Pennsbury
Sharon City
Smethport Area
South Allegheny
South Williamsport Area
Upper Moreland Township

2009

Albert Gallatin
Carlynton
Conestoga Valley
Easton Area
Frazier
Hempfield
Kane Area
Lancaster
Mifflin County
Morrisville Borough
Muhlenberg
Neshaminy
New Brighton Area
New Kensington-Arnold
Pittsburgh
Riverside Beaver County
Rochester Area
Saint Mary's Area
Upper Darby
Wyoming Area

**LRE INDEX SCORES
and
IDENTIFICATION OF SCHOOL DISTRICTS FOR LRE MONITORING**

PDE analyzes and reports the data collected on LRE categories in the following placement categories:

1. Students with IEPs who receive special education outside regular class less than 21% of the day; (higher numbers of students are desirable)
2. Students with IEPs who receive special education outside regular class more than 60% of the day; and (lower numbers of students are desirable)
3. Students with IEPs served in settings outside regular schools. (lower numbers of students are desirable)

A separate LRE index score is assigned for each of these three data categories based upon each district's relative percentage of students receiving special education services as compared to other districts.¹ A high LRE index score indicates a higher potential need for systemic LRE-related improvement within a particular data category. Conversely, a low LRE index score indicates a lower potential need for systemic LRE-related improvement within a particular data category. The three LRE index scores are used to identify half of the districts for LRE monitoring, as follows:

Tier 1 – On-Site LRE Monitoring

The twenty districts where LRE data indicate the highest potential need for systemic LRE related improvement are identified as Tier 1 districts and receive on-site LRE Monitoring.² Districts are identified within the three data categories as follows:

¹ The following placement data is excluded:

- Data for students who are placed without an IEP team decision (students receiving services in a hospital/homebound setting, correctional facility, or out of state facility),
-
- Data for students whose LEA does not control the placement (wards of state), and
- Data for one LEA where students all receive their education in another district (Bryn Athyn School District)

² Districts that are in the process of implementing a Tier 1 LRE corrective action and improvement plan are excluded from Tier identification. During the 2007-08 school year, 23 school districts were identified for Tier 1 on-site LRE Monitoring.

- o The 5 districts with the highest score in the first data category (lowest percentage of students receiving special education services outside the regular education classroom less than 21% of the school day).
- o The 10 districts with the highest score in the second data category (highest percentage of students receiving special education services outside the regular education classroom more than 60% of the school day).
- o The 5 districts with the highest score in the third data category (highest percentage of students receiving special education services outside regular schools).

Tier 2 - Warning

The thirty districts where LRE data indicate that the districts are close to the point of being subject to Tier 1 on-site LRE monitoring receive a letter of warning.³ The letter identifies the data that indicate a need for LRE improvement and the steps to be taken by the district. Districts are identified within the three data categories as follows:⁴

- o The 7 districts with the highest score in the first data category (lowest percentage of students receiving special education services outside the regular education classroom less than 21% of the school day).
- o The 16 districts with the highest score in the second data category (highest percentage of students receiving special education services outside the regular education classroom more than 60% of the school day).
- o The 7 districts with the highest score in the third data category (highest percentage of students receiving special education services outside regular schools).

Tier 3 - Alert

The districts remaining within the bottom half of the data receive a letter of alert. The letter identifies the data that indicate a need for LRE improvement and describes resources available to the district to assist in improvement.

³ Districts that are identified for Tier 1 LRE monitoring or are in the process of implementing a Tier 1 or Tier 2 LRE corrective action and improvement plan are excluded from Tier 2 identification.

⁴ During the 2008-09 school year, the 30 tier 2 school districts were identified as follows: 8 districts with the highest score in the first data category (two districts had the same score because they had the same percentage of students); 15 districts with the highest score in the second data category; and 7 districts with the highest score in the third data category.

APPENDIX 1
Recommendations Made at June, 3, 2010 Panel Meeting

- 1. Vision**
 - a. Recommend that PDE clearly establish a vision for LRE in Pennsylvania. For example, 100% of first graders will be fully included in their neighborhood schools with needed supplementary aids and supports
 - b. Recommend that Intermediate Units not operate segregated preschool classrooms. Create preschools for all children and make it nearly impossible to have a segregated preschool experience.
 - c. Recommend that every child must have an inclusive IEP written before other placement options are considered

- 2. Outcomes**
 - a. Recommend that PDE take seriously the need to provide outcomes evaluation on all PDE initiatives

- 3. Leadership**
 - a. Recommend that a high priority on inclusion of all children with the necessary supports and services as specified in IDEA, Gaskin Settlement Agreement and Oberti be placed on the positions of Secretary of Education and Director of the Bureau of Special Education
 - b. Recommend that PDE/PaTTAN be more aggressive in ensuring that tools and resources such as the Needs Assessment be used at the local level

- 4. Ongoing Advisory Support**
 - a. Recommend that PDE continue to utilize advisory panel members on each Bureau Director initiative to ensure best practice
 - b. Recommend that PDE examine all avenues by which panel members can maintain involvement in the work of the Bureau of Special Education such as through involvement in the Special Education Advisory Panel

- 5. Monitoring**
 - a. Recommend that PDE continue to monitor LRE for all 501 school districts and post results yearly on the PDE website

- 6. Parent Education**
 - a. Recommend continued early education for parents and professionals on the benefits of inclusive settings
 - b. Recommend PDE support parent training in the Supplementary Aids and Services Toolkit and other instruments
 - c. Recommend that PDE continue to send invitations to assist advocacy groups and families in forming groups of various kinds

APPENDIX 2
PENNSYLVANIA
LEAST RESTRICTIVE ENVIRONMENT
PLACEMENT DATA
2004-2009

DISABILITY CATEGORIES (PART 300 FEDERAL REGULATIONS, 2006)

Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(1)(i) **Autism** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) **Deaf-blindness** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) **Deafness** means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance.

(4)(i) **Emotional disturbance** means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

(5) **Hearing impairment** means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(6) **Mental retardation** means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

(7) **Multiple disabilities** means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

(8) **Orthopedic impairment** means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) **Other health impairment** means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or

attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a child's educational performance.

(10) **Specific learning disability**—(i) *General*. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) *Disorders not included*. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) **Speech or language impairment** means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(12) **Traumatic brain injury** means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) **Visual impairment including blindness** means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3); 1401(30))