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INTRODUCTION

The Individuals with Disabilities Education Act (IDEA) is a federal law that provides financial grants to state education agencies to be used for the education of children with disabilities. Congress took action because, prior to 1975, "the education needs of millions of children with disabilities were not being fully met." Congress recognized that many children with disabilities were being excluded from the education system and thus, were not prepared to participate in or contribute to our society as adults. The general provisions section of the IDEA begins:

Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

Central to this provision is the idea that improving educational results will help children with disabilities grow to become independent, self-sufficient adults.

The IDEA requires that the state provide each child with a "free and appropriate public education" (FAPE), offered in the

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2. See id. §§ 1400-1482.
3. Id. § 1400(c)(2).
4. Id. § 1400(c)(1).
5. Id.
6. Id. § 1412(a)(1)(A).
“least restrictive environment”7 (LRE) that is “appropriate.” Although “appropriate” is used to describe both FAPE and LRE, the IDEA does not define “appropriate.”8 The IDEA does not identify specific education services that must be provided, but it is clear that schools are to provide services that will result in academic progress, in an environment “appropriate” for learning social skills.9 The United States Supreme Court has determined that the lack of substantive provisions was intentional,10 as Congress left such decisions to schools and education professionals.11

The IDEA has been successful in gaining access to schools for children with disabilities. All states qualify and receive grants through the Act.12 However, disputes between parents and schools arise regarding both the efficacy of the academic aspect of the education provided and the opportunity for the child with a disability to interact socially with other children, especially non-disabled children.13 The IDEA provides a detailed process for parents and schools to follow when they disagree about how the school district is providing for a child’s academic progress and social development.14

A disability may impact both a child’s academic achievement and a child’s ability to interact with other children and adults. Social learning and academic learning are both essential aspects of education. The language and structure of the IDEA treats LRE and FAPE as equally important.15 However, as interpreted by the

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7. 34 C.F.R. §§ 300.114-.117 (Westlaw 2007) (formerly at 34 C.F.R. §§ 300.130, 300.550-.553 (2006)).
9. See id. § 1400(d).
11. Id. at 192 (“Congress did not impose upon the State any greater substantive educational standard than would be necessary to make such access meaningful.”).
12. See 20 U.S.C. § 1400(d)(2) (stating that the purpose of the IDEA is to assist states); id. § 1412 (outlining state eligibility).
14. 20 U.S.C. § 1415 (the short title of this section is “Procedural Safeguards”).
15. For example, § 1412 enumerates conditions for state eligibility for IDEA grants. Paragraph (a)(1)(A) says, “A free appropriate public education is available to all children with disabilities residing in the state between the ages of 3 and 21”; paragraph (a)(5)(A) says, “To the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled.” Id. § 1412.
courts, FAPE includes only academic learning.\textsuperscript{16} In addition, the FAPE requirement must be met before the LRE requirement is considered, and social learning is considered only in the LRE context.

The Supreme Court has not yet decided a case in which the LRE requirement was at issue. The courts of appeals have devised three different tests designed to analyze and resolve disagreements regarding the LRE.\textsuperscript{17} This Article argues that the focus on academic achievement, to the exclusion of socialization needs, does not accurately reflect the purpose of Congress in the passage of the IDEA and that the Supreme Court should interpret the definition of FAPE to include both academic and social learning as equally important factors with respect to education. Weighing these factors equally will result in decisions that clearly analyze the essential elements of an "appropriate" education and more accurately reflect the purposes of the IDEA.

I. PURPOSES OF THE IDEA

The IDEA seeks to ensure that children with disabilities have access to a free and appropriate education, and that states have support in providing such education.\textsuperscript{18} It does so by making federal grants available to states, through state education agencies, to be used in providing education for students with disabilities.\textsuperscript{19} The public policy behind the IDEA is clear: Congress hopes that children with disabilities will become independent, self-sufficient adults through appropriate education.\textsuperscript{20}

Education for disabled children is provided primarily by state public school systems with grant assistance from the federal government.\textsuperscript{22} Each state must provide the Secretary of Education a plan showing how the state will comply with the IDEA's conditions in

\begin{itemize}
\item \textsuperscript{16} See infra Part II.A.
\item \textsuperscript{17} See infra Part II.B.
\item \textsuperscript{18} Id. § 1400(d). The central purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." Id. § 1400(d)(1)(A).
\item \textsuperscript{19} See id. § 1411.
\item \textsuperscript{20} Id. § 1400(c)(1).
\item \textsuperscript{21} Id. § 1400(d)(1)(A).
\item \textsuperscript{22} Id. § 1400(d)(1)(C) ("The purposes of this title are . . . (C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities . . . ").
\end{itemize}
order to secure this assistance. The IDEA requires "free and appropriate public education," wherein the education is offered in the "least restrictive environment" that is "appropriate." Specifically, states must assure (1) that FAPE is available to all eligible children with disabilities between the ages of three and twenty-one, and (2) that "[t]o the maximum extent appropriate," children are educated in the least restrictive environment. An appropriate education for a child with a disability requires special instruction that may include both special education services and related services.

The Act fails to more clearly define "appropriate" education. The Act simply defines FAPE in terms of the services (including special education services and related services) necessary to meet the educational requirements. It also specifies conditions that must be met when FAPE is provided, including: (1) special education and related services, which must be provided at public expense and under public supervision and direction; (2) the services must meet the standard of the state educational agency; and (3) the services must conform to the child's individualized education program. Similarly, the description of LRE is wanting. The Act does not explain whether "appropriate" LRE is simply an aspect of "appropriate" education or if it serves some other purpose. Rather, the provision requires that the education of children with disabilities take place with non-disabled students as much as is "appropri-
Because the purpose of the Act is to assure that children with disabilities become independent, self-sufficient adults, and because this cannot be achieved through academic learning alone, "education" in the IDEA must involve both academic learning and social learning, as the latter is also important to self-sufficiency.

Generally, FAPE is defined by the courts to refer to academic learning, implying that academic progress is the purpose of "appropriate" education, while the purpose of LRE is viewed by the courts as the promotion of social development. From a compliance perspective, the failure to provide any child either FAPE or LRE is a failure to comply with the Act. Achieving the purpose of the IDEA requires giving a meaning to these terms that supports both social and academic learning, because both are essential elements of an "appropriate" education that will help children with disabilities become independent adults.

A. Development of Children with Disabilities into Independent Adults

Congress passed the IDEA to help children with cognitive disabilities, just as earlier legislation helped those with physical disabilities. Much has been done to remove barriers so that physically disabled people are better able to fully participate in society. The

32. Id.
33. See, e.g., Daniel R.R. v. Bd. of Educ., 874 F.2d 1036, 1047 n.8 (5th Cir. 1989) ("As we use the term 'educational benefits' here, we, like the hearing officer and the district court, refer to the academic benefits available through education—as opposed to the overall growth and development benefits gained from education.").
34. See, e.g., Oberti v. Bd. of Educ., 995 F.2d 1204, 1216 n.23 (3d Cir. 1993) ("Learning to associate, communicate and cooperate with non-disabled persons is essential to the personal independence of children with disabilities. The Act's mainstreaming [LRE] directive stems from Congress's concern that the states, through public education, work to develop such independence for disabled children.").
35. The federal courts' interpretations of the IDEA have established three bases for finding a violation. Board of Education v. Rowley, 458 U.S. 176 (1982), established that a violation may be found for (1) Failure to follow the procedural requirements of the IDEA, and (2) Failure to meet the requirements of FAPE. The third provision, failure to meet the requirements of LRE, has been established by a number of appellate courts. See, e.g., Sacramento City Unified Sch. Dist v. Rachel H., 14 F.3d 1398 (9th Cir. 1994); Daniel R.R., 874 F.2d 1036.
36. 20 U.S.C. § 1400(d) (stating the purpose of IDEA); 20 U.S.C. § 1401(3)(A) (defining "child with a disability").
IDEA supports education for school-age children with disabilities that affect their ability to learn. This requires more than the removal of barriers. Special services designed to overcome learning difficulties are required so that children with disabilities are better able to achieve the twin goals of independent living and economic self-sufficiency.

Employment is essential for economic self-sufficiency in our society. Although there is wide variation in the skills and knowledge required for different jobs, nearly all jobs today require basic academic knowledge, including reading, writing, and arithmetic. Different disabilities affect the learning of these skills in different ways. Two examples will illustrate some of the variations. First, a blind child will need help learning to read Braille and, perhaps, access to, and instruction in, special audio recording equipment. These special services make it possible for the blind child to learn academic information and, at the same time, learn to use the tools that will allow her to perform a variety of jobs as an adult.

A second example is a child with autism. Many children with autism are non-verbal, making it difficult to determine their academic understanding. However, new forms of communication have been developed to allow communication with some non-verbal children. As with a blind child, special services may help the

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39. 34 C.F.R. § 300.8 (Westlaw 2007) (formerly at 34 C.F.R. § 300.7) (definition of a child with a disability).
40. 34 C.F.R. § 300.39 (formerly at 34 C.F.R. § 300.26) (definition of special education).
41. 34 C.F.R. § 300.8(c)(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.”).
child with autism acquire academic knowledge and develop into an employable adult.\textsuperscript{44}

Social interaction, in addition to employment, is an essential element of independence and self-sufficiency.\textsuperscript{45} Basic social understanding, the ability to interact with others, is required for many jobs as well as other aspects of daily living in American society. Like basic academic skills, different disabilities affect the learning of social skills in different ways. However, unlike academic skills, social interaction requires at least two people. Because of this, social interaction is influenced by the non-disabled person's perception and understanding of the disabled person's disability. The two examples above illustrate these differences. The limitations caused by blindness are usually understood, in general terms, by sighted people. Effective social interaction between a sighted and a blind person can be learned by both. In addition, society provides a variety of devices, such as white canes, to help blind persons interact with society and to help signal sighted individuals that the person carrying the cane is blind.\textsuperscript{46} The experience of a child with autism is often very different. A child with autism may exhibit a wide range of unusual behaviors, for example, apparently random vocalization by a non-verbal child.\textsuperscript{47} Such behavior is often not understood by people without autism who encounter a child with autism. If the child with autism cannot communicate in a way that a non-disabled person understands, the lack of understanding may become a complete barrier to social interaction. Such a barrier may preclude employment or even simple interaction, such as buying a snack at a convenience store. A child with autism who does not develop some ability to successfully interact with non-disabled children in school may become an adult with little independence.

\begin{flushleft}

\textsuperscript{45} Cf. Ann Hubbard, Meaningful Lives and Major Life Activities, 55 ALA. L. REV. 997, 1010 (2004) (discussing the ADA and noting that cognition, social interaction, and work "figure prominently in virtually any philosophical account of a full and meaningful human life").


\end{flushleft}
B. Free Appropriate Public Education (FAPE)

The definition section of the IDEA\textsuperscript{48} provides that:

The term “free appropriate public education” means special education and related services that—

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.\textsuperscript{49}

The Act does not further define “appropriate” education. Education in the context of school commonly refers to gaining knowledge and understanding of academic subjects.\textsuperscript{50} One dictionary defines education as, “The process of training and developing the knowledge, skill, mind, character, etc., especially by formal schooling; teaching; training.”\textsuperscript{51} Thomas Jefferson, an early proponent of public education, said, “The whole scheme of education would be teaching all the children of the State reading, writing, and common arithmetic.”\textsuperscript{52} This definition of education, predominant in society today, limits education to academic learning.

Students’ understanding of the academic material is typically measured by testing, and students who fail may not be allowed to progress to the next grade level. Some children fail because of a disability that affects the child’s ability to learn. The IDEA requires schools to implement procedures to identify students who have such disabilities\textsuperscript{53} and to provide special education and related services designed to help the child overcome, or compensate for, her specific learning difficulty.\textsuperscript{54} Educators have found that many children who some years ago would have been labeled “slow” or “retarded” can learn academic subjects when they are given additional attention or taught with a different method. Today, the disa-


\textsuperscript{49} Id.

\textsuperscript{50} MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 367 (10th ed. 1993) (defining “education” as “the field of study that deals mainly with methods of teaching and learning in schools”).

\textsuperscript{51} WEBSTER’S NEW WORLD DICTIONARY 453 (4th Coll. Ed. 1988).


\textsuperscript{54} Id. § 1412(a)(4) (“Individualized education program” requirement).
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Abilities that result in a learning difficulty are better understood, and schools are more often able to tailor special services to match the needs of the individual child, allowing the child to acquire academic skills essential for employment. Thus, the special education and related services that support academic learning are an essential element of FAPE. However, limiting the scope of "appropriate" education to only academic learning would not fulfill the purposes of the IDEA.

As noted, the purpose of the IDEA is to prepare children for employment and independent living through education. Although understanding of academic subjects is an essential element of this purpose, so too is understanding of social interaction. Generally, social development is treated as a natural, almost inevitable outcome of children attending school together. Extracurricular activities such as sports and music, as well as school-sponsored social events, support the social development of students.

However, a child with a disability that inhibits social development may not learn appropriate social interaction simply by attending school. The child's disability can affect her ability to interact with other children in at least two ways. First, poor academic performance may cause the child to feel different, not part of the class. Special services directed toward academic learning may also result in improved social interaction for such a child. Second, some disabilities, notably autism, directly inhibit the child's ability to develop social skills. Children with autism often do not imitate others, thus, they do not learn from imitation in the way that non-


57. See, e.g., Howard P. Benard, Little League Fun, Big League Liability, 8 Marq. Sports L.J. 93, 131 (1997) ("[P]articipation in community sponsored sports programs is just as vital to children's social development as is their attending school . . . ."); Klicka, supra note 56, at 15-16.


autistic children do.60 For children whose disabilities affects social learning, special education and related services directed toward social learning are thus an essential element of education.

The IDEA charges schools with supporting children with disabilities to ensure that they become independent adults through "appropriate" education.61 The requirement to provide FAPE means providing special education and related services that support both social and academic learning since both are essential elements for becoming independent adults.

C. The Role of the LRE Requirement

The IDEA, in addition to the requirement of FAPE, requires that education of children with disabilities take place with non-disabled students as much as is "appropriate."62 The term "least restrictive environment" has been interpreted to embody a range of possible placements, including the regular education classroom (least restrictive), part-time placement in a special education classroom, or full-time placement in a separate institution, school, or at home (most restrictive).63 In addition to the more general requirement for "appropriate" placement, the Act specifies a strong preference for placement in the regular classroom. One of the required elements of the child's Individualized Education Program (IEP)64 is "an explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class."65

The purpose of the LRE requirement, with its focus on education in the regular education classroom, is not further addressed in the Act. Since the purpose of the IDEA is to ensure that children with disabilities have access to a free and appropriate education, the LRE requirement must be intended to support that purpose in some way. The presence of children with disabilities in the regular

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60. See generally SERVING STUDENTS WITH AUTISM: THE DEBATE OVER EFFECTIVE THERAPIES 9 (Patricia Grywacz & Lisa Lombardo eds., 1999) ("Autistic kids don't come with hard-wired skills like imitation, so they use their cognitive skills to overcome them.").
62. Id. § 1412(a)(5)(A).
63. 34 C.F.R. § 300.115(a) (2007) (formerly at 34 C.F.R. § 300.551 (2006)) ("Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.").
64. 20 U.S.C. § 1414(d)(1)(A) (defining an IEP and its elements). The IEP, developed by the school and the parents together, includes a number of elements detailing the services that will be provided to the child as well as the child's expected progress. Id.
65. Id. § 1414(d)(1)(A)(i)(V).
classroom influences the quality of the educational experience for both non-disabled children and children with disabilities.\textsuperscript{66}

The LRE requirement is included in the Act to assure that, to the extent possible, the unique quality of the educational experience resulting from the inclusion of disabled children is added to the regular classroom.\textsuperscript{67} The LRE requirement goes directly to the social learning aspect of FAPE. The nature of learning social interaction requires experience with a variety of types of interaction\textsuperscript{68} with a number of individuals.\textsuperscript{69} Attendance in the regular classroom provides opportunities for interaction between disabled and non-disabled children in the formal environment of a classroom, supporting social learning for both.\textsuperscript{70} The LRE requirement furthers the IDEA purpose of developing self-sufficient, independent adults by using the regular classroom experience to support social learning.

Courts resolving IDEA disputes have defined both FAPE and LRE.\textsuperscript{71} An analysis of the key decisions reveals an incomplete definition of FAPE, limiting “appropriate” education to academic learning.\textsuperscript{72} The decisions also demonstrate an inconsistent analysis of the purpose of LRE as well as a failure to consider the interrelated nature of FAPE and LRE, instead treating them as separate requirements.\textsuperscript{73}

\begin{itemize}
  \item \textsuperscript{66} Note that “quality” here refers to the basic nature of the educational experience. It does not imply superiority or excellence.
  \item \textsuperscript{67} \textit{Id.} § 1412(a)(5).
  \item \textsuperscript{68} Examples include asking for help, group discussion, and social chat.
  \item \textsuperscript{69} Examples include people one knows well, unfamiliar people, friends, and bullies.
  \item \textsuperscript{70} Although the IDEA concerns children with disabilities, the independent-living provision of the Act requires the ability to interact with non-disabled persons. In addition, at least one court considers the experience for non-disabled children supportive of the purpose of the Act. Oberti v. Bd. of Educ., 995 F.2d 1204, 1217 n.24 (3d Cir. 1993) (“Courts should also consider the reciprocal benefits of inclusion to the non-disabled students in the class.”).
  \item \textsuperscript{71} See infra Parts II.A-B.
  \item \textsuperscript{72} See infra Parts II.A-C.
  \item \textsuperscript{73} \textit{Id.}
\end{itemize}
II. Court Interpretations of the IDEA

A. The Supreme Court's Decision in Rowley—Academic Learning Required

The United States Supreme Court, in *Board of Education v. Rowley*,

74 provided the definition of FAPE as it is used in the IDEA cases today. The Court established a two-prong test to be used to decide whether a child has been denied FAPE. First, it is necessary to determine whether "the State complied with the procedures set forth in the Act."75 Second, it must be determined whether "the individualized educational program developed through the Act's procedures [is] reasonably calculated to enable the child to receive educational benefits."76

The *Rowley* case concerned a deaf child, Amy Rowley, who had limited residual hearing and was an excellent lip reader.77 The school provided a hearing aid system to amplify the teacher's voice. This allowed Amy to hear partially but to a considerably lower degree than if she were not deaf.78 Amy was able to pass from grade to grade but was learning less than she would have if she did not have this disability.79 Her parents were not satisfied with this level of academic performance and wanted the school to provide a sign-language interpreter for all academic classes instead of the amplification system.80

The dispute in *Rowley* concerned only the issue of academic performance. Thus, the Court, when using the term "education," was referring only to the academic aspect of education. The Court acknowledged that Amy Rowley was receiving her education in a regular classroom and, therefore, limited its analysis to the specific


75. Id. at 206-07. For some time, lower courts applied this prong so that any procedural deviation, no matter how minor, required a judgment of denial of FAPE. This is now limited to procedural errors that negatively impact the child's education. *See*, e.g., J.K. v. Metro. Sch. Dist., No. 1: 04-CV-293-TS, 2005 WL 2406046, at *13 (N.D. Ind. Sept. 27, 2005) ("Only those procedural flaws that result in loss of educational opportunity can be held to deny a student a FAPE.").

76. Rowley, 458 U.S. at 207.

77. Id. at 184.

78. Id.


80. Id. at 184.
situation presented in the case.\textsuperscript{81} Courts have continued to use the \textit{Rowley} analysis to decide whether FAPE has been provided, adding, wrongly, that FAPE includes only academic learning.\textsuperscript{82} As a result, courts deciding cases that involve a dispute regarding LRE first decide whether the "educational benefits" (meaning academic learning) required for FAPE have been provided and, secondarily, whether education is being offered in the least restrictive environment.\textsuperscript{83}

\textbf{B. Appellate Court LRE Decisions—Social Learning Achieved Through the LRE Requirement—Secondary to Academic Learning}

Following the \textit{Rowley} definition of FAPE, disputes about LRE have used the LRE requirement as the basis for the argument that social learning may be as important as academic learning. The U.S. courts of appeals have treated the LRE requirement as separate from, and secondary to, the FAPE requirement.\textsuperscript{84} The \textit{Rowley} Court did not address the LRE requirement, nor has the Supreme Court addressed the issue in any other case. Because there is no Supreme Court precedent resolving an LRE dispute, analysis of this issue has been left to the courts of appeals. They have found this analysis especially thorny because the IDEA "embodies an express tension between its two substantive commitments to the 'appropriate education' and to the least restrictive alternative."\textsuperscript{85} These courts have developed three different tests to analyze LRE deci-

\textsuperscript{81} Id. at 202 ("We do not attempt today to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act. Because in this case we are presented with a handicapped child who is receiving substantial specialized instruction and related services, and who is performing above average in the regular classrooms of a public school system, we confine our analysis to that situation.").

\textsuperscript{82} Note that "educational benefit," the substantive requirement of FAPE, most often refers only to academic learning. \textit{See}, e.g., Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1047 n.8 (5th Cir. 1989).

\textsuperscript{83} \textit{See}, e.g., Beth B. v. Van Clay, 211 F. Supp. 2d 1020, 1031 (N.D. Ill. 2001) ("[O]ur foremost consideration, is still assuring educational benefits to the child. \textit{Daniel R.R.} focuses first on whether the education is satisfactory, and then on whether the child could have greater exposure to non-disabled students.").

\textsuperscript{84} Sacramento City Unified Sch. Dist. v. Rachel H., 14 F.3d 1398, 1404 (9th Cir. 1994); \textit{Daniel R.R.}, 874 F.2d at 1048; Roncker \textit{ex rel.} Roncker v. Walter, 700 F.2d 1058, 1063 (6th Cir. 1983).

\textsuperscript{85} Oberti v. Bd. of Educ., 995 F.2d 1204, 1214 n.18 (3d Cir. 1993) (quoting Professor Martha Minow).
sions—the Roncker test,86 the Daniel R.R. test,87 and the Rachel H. test.88

The Roncker test first requires a decision regarding what special education services will be provided; it then asks whether it is feasible to deliver the same services in the regular classroom.89 This “feasibility” test has been criticized because it suggests that courts should make decisions regarding which educational methods are feasible in the regular classroom.90 The Daniel R.R. court expressed this concern, saying, “Whether a particular service feasibly can be provided in a regular or special education setting is an administrative determination that state and local school officials are far better qualified and situated than are we to make.”91 The two-part test developed by the Daniel R.R. court replaced the Roncker feasibility question with the question whether education “can be satisfactorily achieved” in the regular classroom.92 The Rachel H. court generally adopted the “satisfactorily achieved” approach from Daniel R.R. but changed some of the factors to be considered when deciding the issue.93

The courts of appeals have recognized that the Supreme Court explicitly limited the scope of the Rowley decision to the facts in that case and that LRE was not an issue before the Court.94 However, none of the LRE decisions offer an analysis of how the

86. Roncker, 700 F.2d at 1063.
87. Daniel R.R., 874 F.2d at 1048.
88. Rachel H., 14 F.3d at 1404.
89. Roncker, 700 F.2d at 1063 (“In a case where the segregated facility is considered superior, the court should determine whether the services which make that placement superior could be feasibly provided in a non-segregated setting.”).
91. Daniel R.R., 874 F.2d at 1046.
92. Id. at 1048. The question for part one is “whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily.” Id. Part two is reached only if the answer to part one is “no” and the child is to be removed from the regular classroom. Id. If so, the question is “whether the school has mainstreamed the child to the maximum extent appropriate.” Id.
93. Rachel H., 14 F.3d at 1401. Four factors are considered: (1) educational benefits; (2) non-academic benefits; (3) effect on the teacher and children in the regular class; and 4) cost. Id. The Daniel R.R. court considered the overall educational experience rather than non-academic benefits and did not consider cost. See Daniel R.R., 874 F.2d at 1049-50.
94. Daniel R.R., 874 F.2d at 1045.
Rowley definition of FAPE is affected, if at all, by the LRE requirement. Instead, the courts view the LRE issue as separate from FAPE, treating the Rowley definition of FAPE as complete and final. As a result, courts treat FAPE (academic learning) and LRE (social learning) as conflicting requirements. Furthermore, the nature of the conflict is seen as a zero-sum equation, i.e., that a decision favorable to LRE necessarily subtracts from FAPE. The basis of the perceived conflict between social learning and academic learning in special education is found not in the substantive provisions of the Act, but, rather, in the adoption of the narrow definition of “appropriate” education from Rowley for subsequent IDEA analysis by the courts of appeals.

C. The IDEA Requires Academic Learning and Social Learning in Balance—Both Secondary and Separate Treatment are Incorrect

The treatment of social learning as secondary to academic learning is not consistent with the purpose of the IDEA. Such treatment may deny the benefits of social learning to both disabled and non-disabled children, and may cause a loss of services for those children with a disability that directly impedes social learning. In addition, analysis of a child’s social and academic learning needs independently of each other is contrary to actual educational experience and may lead to less than optimal decisions regarding services provided and the placement of students with disabilities.

The twin goals of social learning and academic learning do not necessarily conflict. Rather, for most students, these two aspects of learning are simply parts of a single educational experience. The IDEA seeks to give children with disabilities educational experiences similar to those of non-disabled children. Accordingly, “appropriate” education requires balancing the social and academic learning needs of each child. For example, when children learn to ask permission to answer a question posed by the teacher, they show academic understanding as well as appropriate social conduct.

95. Oberti v. Bd. of Educ., 995 F.2d 1204, 1214 (3d Cir. 1993) (citation omitted) (noting the “tension within the Act between the strong preference for mainstreaming . . . and the requirement that schools provide individualized programs tailored to the specific [academic] needs of each disabled child”).

96. See, e.g., Roncker ex rel. v. Walter, 700 F.2d 1058, 1063 (6th Cir. 1983) (suggesting that the academic benefit lost by placement in the regular classroom may be offset to some extent by providing additional services in the regular classroom).

The decisions about placement and required support services for a child with a disability must balance social and academic learning in order to meet the legislative goals of the IDEA.

The importance of social-development benefits that result from the placement of children with disabilities in the regular classroom has been acknowledged by the courts. For example, the court in *A.S. v. Norwalk Board of Education* acknowledged that a child may obtain unique benefits "from integration in a regular classroom which cannot be achieved in a segregated environment, i.e., the development of social and communication skills from interaction with non-disabled peers."98 The court also noted that Congress intended social learning to be considered important: "In passing [the IDEA], Congress recognized the importance of teaching skills that would foster personal independence and dignity for handicapped children. Learning to associate, communicate, and cooperate with non-disabled persons is essential to the personal independence of children with disabilities."99 These aspects of learning are not a secondary consideration. Rather, they are essential for self-sufficiency and are required elements of an "appropriate" education.

The court in *Oberti v. Board of Education* noted that, in addition to the social-learning benefit that placement in the regular classroom provides for the child with a disability, the non-disabled children in that classroom may receive added social learning.100 The court said that "[c]ourts should also consider the reciprocal benefits of inclusion to the nondisabled students in the class. Teaching nondisabled children to work and communicate with children with disabilities may do much to eliminate the stigma, mistrust and hostility that have traditionally been harbored against persons with disabilities."101 Although the IDEA is not intended to benefit non-disabled children, awareness and understanding of individuals with disabilities supports the Act's purpose. Children who have the experience of interacting with a child with a disability may have greater understanding, be more accepting, and be more willing and able to work with adults with disabilities.

Children with disabilities that negatively impact their own social learning may need supplemental services that specifically address that aspect of their education. For example, autism inhibits a

99. *Id.* at 547 (quoting *Oberti*, 995 F.2d at 1216 n.23).
100. See *Oberti*, 995 F.2d at 1217 n.24.
101. *Id.*
child’s ability to interact with others, creating a social dysfunction that “is perhaps the most central defining feature of autism and related conditions.”102 Many children with autism are non-verbal and lack any form of understandable and appropriate communication, a key element for social interaction.103 Although communication may be considered an aspect of social learning, the ability to communicate with others is not of secondary importance for independent living.

The lack of verbal communication also exemplifies the intertwined nature of social and academic learning because verbal communication is a primary element of both. Treating them separately adds confusion to the analysis of a child’s educational needs and may result in a failure to properly assess those needs. During the first thirteen years of her life, Sue Rubin communicated solely by using behaviors. She offers an excellent illustration of the flaws in treating both aspects separately.104 “Sadly, I was locked in autism,” she says.105

“It was only after I began to type that my brain became organized enough to understand what was going on in the world around me... I became aware of people and their killer personal lives.” [As a child,] Sue used to beat her head against the concrete floor at her school, and regularly bit, kicked and pinched her parents. She was considered severely mentally retarded with an IQ of 24...106

Since learning to communicate through typing, she has graduated from high school and attended Whittier College.107 Because Sue Rubin’s autism was considered the cause of both her mental retardation and her aggressive behavior,108 her story demonstrates how the inability to communicate can dramatically affect both academic performance and social learning.

Courts have adopted an understanding of FAPE, based on the Rowley decision, that limits “appropriate” education to academic

102. SERVING STUDENTS WITH AUTISM: THE DEBATE OVER EFFECTIVE THERAPIES, supra note 60, at 9.
103. PUZZLE OF AUTISM, supra note 44, at 11.
105. Id.
106. Id. (quoting Sue Rubin).
107. Id.
108. Id.
learning.109 As a result, the importance of social learning is diminished. LRE is part of the requirement that the quality of the educational experience for children with disabilities be similar to that of non-disabled children. However, the courts have treated LRE as the method for providing social learning. This has led to a perception that social and academic learning are separate and conflicting aspects of education. In reality, however, they are both essential, and in many ways intertwined, elements of an education that will prepare children to become independent adults. The analysis of FAPE should include consideration of whether sufficient supports and services have been provided so that the child achieves meaningful benefits in both areas of learning. To that end, a new test is proposed.

III. PROPOSED HOLISTIC LEARNING TEST

The proposed test is an extension of Rowley to a social learning setting. It explicitly defines FAPE to include both academic and social learning and recognizes that LRE analysis requires consideration of the quality of the entire educational experience anticipated in the proposed environment.

The Rowley Court developed a two-prong test addressing procedural errors and FAPE.110 The first prong of Rowley is a threshold inquiry asking whether the “State complied with the procedures set forth in the Act.”111 If the state has not complied with the procedural requirements, it is in violation of the Act and no further analysis is needed. This first prong remains unchanged in the proposed test. A failure to comply with procedures, resulting in the loss of educational opportunity, is a denial of FAPE.

Under the proposed Holistic Learning test, the second prong of Rowley is modified to include social as well as academic learning, correcting the current misperception that educational benefit is limited to academic learning. The question is whether “the individualized educational program developed through the Act’s procedures [is] reasonably calculated to enable the child to receive”112 academic and social educational benefits.113 Compliance with FAPE

110. See supra Part II.A.
112. Id. at 206-07.
113. Note that, unlike the Rowley test, the Holistic Learning test specifically breaks “educational benefits” into academic and social components.
would thus require a showing that consideration has been given to both social and academic learning, finding the combination of the two that will best achieve educational benefit for the child.

The third prong, a two-step analysis, is reached in those cases involving a dispute regarding LRE. The first step, addressing the statutory presumption in favor of placement in the regular classroom, asks whether the child will be placed full-time in the regular classroom and, if not, whether adequate consideration has been given to providing the needed services in the regular classroom. Step two, applied in the case of a child who will not be placed in the regular classroom at all, asks whether adequate provisions have been made for the child to experience interaction with non-disabled peers in environments outside the classroom.

Analysis of two decided cases under the proposed test will illustrate the beneficial changes that could result. A summary of the facts and the court’s analysis in each case is followed by an analysis using the proposed Holistic Learning test. The first prong of the Holistic Learning test—procedural compliance—is not at issue in any of these examples and is therefore not analyzed.

A. First Example: Katharine G.\textsuperscript{114}

1. Synopsis of the Analysis of the Court

When she was three years old, Katherine G. was diagnosed with a language disorder and found eligible for special education services under the IDEA.\textsuperscript{115} She was placed in a special day care and taught by a speech and language pathologist during two preschool years.\textsuperscript{116} When she reached kindergarten age, her parents requested that she be placed in a regular kindergarten class.\textsuperscript{117} According to her teacher’s assessment, Katherine’s language ability had improved during the past year, but she was “not quite ready for participation in a full inclusion placement.”\textsuperscript{118} The school district determined that placement in the regular class would not be appropriate and offered placement in a special kindergarten day class with time in the regular classroom from 12:00 p.m. to 2:15 p.m. each

\textsuperscript{114} Katherine G. v. Kentfield Sch. Dist., 261 F. Supp. 2d 1159 (N.D. Cal. 2003), aff’d, 112 F. App’x 586 (9th Cir. 2004).
\textsuperscript{115} Id. at 1162.
\textsuperscript{116} Id.
\textsuperscript{117} Id. at 1163.
\textsuperscript{118} Id.
No agreement on placement was reached, and both the school and Katherine’s parents asked for a due process hearing.120 The hearing officer121 found “that a full inclusion placement, the alternative urged by Katherine’s parents, even supplemented with appropriate aides and services, would provide Katherine with no educational benefit” and, therefore, the district’s placement was appropriate.122 Katherine’s parents appealed and the district court affirmed the hearing officer’s decision, saying that Katherine “will have to show that . . . as a matter of law it is more likely than not that a full inclusion setting would have provided her with educational benefit.”123 The court used the Rachel H. four-factor balancing test124 to determine whether Katherine would receive educational benefit. The court applied the four factors as follows:125

1. “Katherine would not receive any educational (i.e., academic) benefits from a full inclusion placement.”126
2. “Katherine would likely receive some non-educational benefits from a full inclusion placement.”127
3. “Katherine’s presence in a regular classroom would likely have minimal effect on the teacher and other students.”128
4. The school district conceded that cost was not a factor.129

Based on these findings, the court decided that “the first factor effectively ‘trumps’ . . . [a] finding[ ] regarding the other three factors and compels . . . [a] conclusion[ ] that a full inclusion placement would not result in Katherine’s being provided an FAPE.”130 Said another way, the court cannot consider social learning benefits unless academic learning benefits are first shown.

119. Id.
120. Id. at 1164.
121. A hearing officer is similar to an administrative law judge and conducts due process hearings, deciding the case at the administrative level. See 34 C.F.R. § 300.511(c) (Westlaw 2007).
123. Id. at 1175.
124. The four factors are: (1) educational benefits; (2) non-academic benefits; (3) effect on the teacher and children in the regular class; and (4) cost. See supra note 93 and accompanying text.
126. Id. at 1182.
127. Id.
128. Id. at 1183.
129. Id.
130. Id.
2. Holistic Learning Analysis

The Holistic Learning analysis requires the consideration of social learning and academic learning together as elements of FAPE. Katherine’s social learning needs are identified and balanced with her academic learning needs to determine the services needed to provide her with FAPE. This approach allows for the possibility that even though Katherine receives less academic learning, the importance of the social learning outweighs that of academic learning for this child, with this disability, at this stage in her education.

Katherine’s language disorder is a disability that directly affects her ability to interact with others, including her teachers and classmates, and may affect her academic performance as well. Using the Holistic Learning analysis, services and learning aids needed to provide Katherine with both social learning and academic learning are identified to meet the FAPE requirement prior to consideration of placement.

After the FAPE determination is made, the role of placement in providing Katherine the anticipated educational experience is considered. A determination is made as to whether all of the services Katherine needs can reasonably be provided in the regular classroom. If so, placement in the regular classroom is presumed to be appropriate. If not, it may be that placement in the regular classroom is essential to provide some of the services identified as necessary and therefore such placement remains the most appropriate option. Finally, the court must also consider the effects, both positive and negative, of Katherine’s presence in the regular classroom. For example, if Katherine’s behavior is disruptive and cannot be controlled with behavioral supports, placement in the regular classroom may not be appropriate.

B. Second example: Michael J.\textsuperscript{131}

1. Synopsis of the Analysis of the Court

Patrick J. was diagnosed with autism before his second birthday.\textsuperscript{132} He was found to be moderately mentally retarded with a serious impairment in communication ability.\textsuperscript{133} His evaluation indicated that he would need speech/language therapy and occupa-

\textsuperscript{132} \textit{Id.} at *2.
\textsuperscript{133} \textit{Id.} at *4.
tional therapy as well as academic support. His parents arranged for intensive (40 hours per week) Applied Behavioral Analysis training in their home from the time Patrick was three years old to the time he was six years old. The school district offered placement in the school's autistic support classroom, but Patrick's parents felt that the school district personnel were not adequately trained, and enrolled him in a private school. His parents then requested a due process hearing seeking reimbursement for the private school tuition.

Although the case was a dispute regarding placement, the court provided little analysis of LRE considerations related to placement. The parents argued that "offering a child education within the least restrictive environment is not a substitute for offering FAPE." The court agreed, saying, "The School District must first prove that the IEP will provide a meaningful educational benefit." The court's finding, that the program offered by the school was "reasonably designed to assist Patrick [to] succeed in an educational environment," appears to be based solely on considerations of academic learning. Consideration of social learning is limited to the court noting that it was "relevant" that the District's proposed placement would "provide an appropriate education for Patrick in the least restrictive environment possible, where Patrick would have the opportunity to interact with non-disabled peers in controlled settings." This court, like the Katherine G. court, found that social learning was not part of FAPE.

2. Holistic Learning Analysis

The program proposed by the District was designed to "provide for communication and socialization skill development." The court found that "the strategies the District contemplated . . . were meaningful, sufficiently intense, and reasonably designed to assist Patrick [to] succeed in an educational environment." Al-

134. Id.
135. Id.
136. Id. at *11.
137. Id. at *12.
138. Id. at *26 (quoting S.H. v. State Operated Sch. Dist. of Newark, 336 F.3d 260, 272 (3d Cir. 2003)).
139. Id.
140. Id. at *25.
141. Id. at *26.
142. Id. at *24.
143. Id. at *25.
though referred to by the court in the LRE context, it appears that
the school offered supports and services that addressed both aca­
demic and social learning, thereby satisfying the FAPE requirement
as defined in the proposed Holistic Learning test.

The first step in the third prong of the Holistic Learning test
considers whether the proposed placement is in the regular class­
room. However, since placement in the regular classroom is not
considered in this case, the analysis proceeds to the second step—
whether adequate provisions are made for the child to interact with
non-disabled peers. The private school placement the parents
chose did not include any opportunity for interaction with non-dis­
abled peers. In contrast, the placement proposed by the school in­
cluded the opportunity for Patrick to interact with non-disabled
peers in controlled settings. Using the Holistic Learning analysis,
the school’s proposal is the more appropriate because it will pro­
vide Patrick with the services and supports he needs for both social
and academic learning in the least restrictive environment.

CONCLUSION

Congress passed the IDEA to ensure that children with disabil­
dies have access to education, thereby helping them to become in­
dependent, self-sufficient adults. Special education services are
provided so that children with disabilities can gain the knowledge
they need to become self-sufficient adults.

Traditionally, education has referred to the acquisition of aca­
demic knowledge, and courts, deciding whether a particular child
has been denied a “free and appropriate public education,” have
adopted the traditional meaning, equating “appropriate” education
with academic learning. Courts treat the requirement for FAPE as
a threshold requirement that must be met before the LRE require­
ment is considered. As a result, social learning is treated as sepa­
rate from, and secondary to, academic learning, and is addressed
indirectly through the LRE requirement.

Because courts equate FAPE exclusively with academic learning,
parties use the LRE requirement to include social learning as an
essential element of education. The cases show that attempts to

144. In this case, neither party proposed placement in the regular classroom. It
should be noted that the school is still obligated to provide a statement explaining the
reasons that Patrick cannot be placed in the regular classroom. See 34 C.F.R.
§ 300.320(a)(5) (Westlaw 2007).
use LRE as a vehicle to enhance social learning through interaction with non-disabled peers are successful only in those cases where academic learning can be achieved in the regular classroom. This incorrect interpretation results in a failure to acknowledge social learning as an essential element of “appropriate” education, inconsistent judicial analysis of the LRE requirement, and interpretations of the LRE requirement that are inconsistent with the IDEA’s purpose. Since basic social skills are necessary for independent adults, the IDEA’s goal of promoting self-sufficiency is impeded by this misinterpretation.

This approach also leads to the incorrect conclusion that the FAPE and LRE requirements conflict in a way that can only be resolved by favoring one at the expense of the other. Analysis of the Katherine G. and Michael J. cases using the proposed Holistic Learning test demonstrates that the Holistic Learning approach clarifies the meaning of “appropriate” education for a particular child and focuses the role of LRE on the interaction between the child with a disability and his non-disabled peers and the effect of that interaction on the quality of the educational experience.

The LRE requirement reflects an understanding that self sufficiency requires the ability to interact successfully with non-disabled people. The Holistic Learning test eliminates the use of LRE as the only avenue for inclusion of social learning as an element of a child’s educational needs. The role of the LRE requirement is to assure that, in addition to special services to support both academic and social learning, schools provide an educational environment that offers opportunities for learning from interaction between children with disabilities and their non-disabled peers. This approach is consistent with the LRE provisions of the Act, reduces confusion regarding LRE decisions, and requires schools to address the social learning needs of children with disabilities so that they are more likely to become self-sufficient adults.