



**Disability
Rights OHIO**

We have the legal right of way.

Improving Education for Students with Disabilities



DISABILITY RIGHTS OHIO
200 Civic Center Dr.
Suite 300
Columbus, Ohio 43215-4234

614-466-7264 or 800-282-9181
FAX 614-644-1888
disabilityrightsohio.org

**OHIO DISABILITY RIGHTS LAW
AND POLICY CENTER, INC.**

How We Got Here

In 1994, **Disability Rights Ohio (DRO)** embarked on what proved to be a very long fight, bringing a class action suit against the State of Ohio on behalf of all students with disabilities in the State who are eligible to receive special education services. Originally connected to a related lawsuit brought by school districts to fix Ohio's school funding system, the special education portion was stayed for many years while that lawsuit went through the state court system.

Then, in 2009, DRO and the State of Ohio settled some of the claims for the class of students with disabilities, which resulted in improvements to the state's special education monitoring of school districts and complaint system. However, the central question of whether Ohio was providing sufficient resources and support to school districts so that students with disabilities could get the education required by federal law, remained.

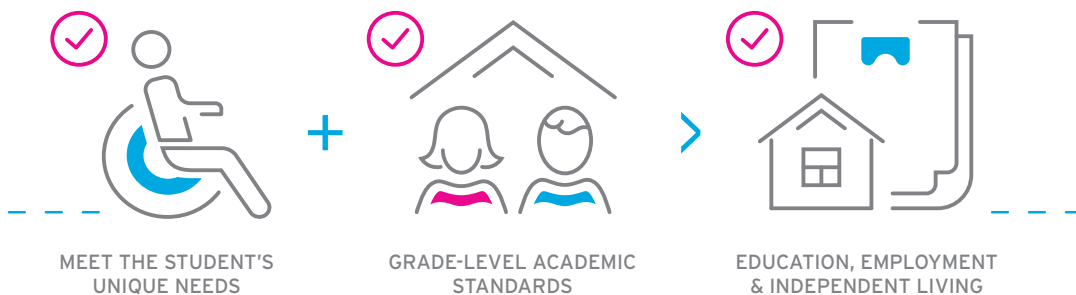
Now, a decade later, after thousands of hours of work, hundreds of court filings, and multiple expert reports, with the help of the Bazelon Center for Mental Health Law and the law firm of Steptoe & Johnson (DRO's "co-counsel"), DRO has successfully worked with the Ohio Department of Education to mediate and settle this class action lawsuit. The comprehensive settlement agreement focuses on improving outcomes for students with disabilities in real and concrete ways.

The Law

Ohio is responsible for ensuring that students with disabilities receive the special education they need to learn and grow academically. Students with disabilities are entitled to what federal laws define as a "free appropriate public education" (FAPE). This means that a state must make sure students with disabilities receive specialized instruction and related services¹ that are:

- Focused to meet the student's unique needs,
- Aligned with grade-level academic standards, and
- Designed to prepare the student for further education, employment and independent living.

FAPE: STUDENTS WITH DISABILITIES NEED TO RECEIVE SPECIALIZED INSTRUCTION AND SERVICES THAT:



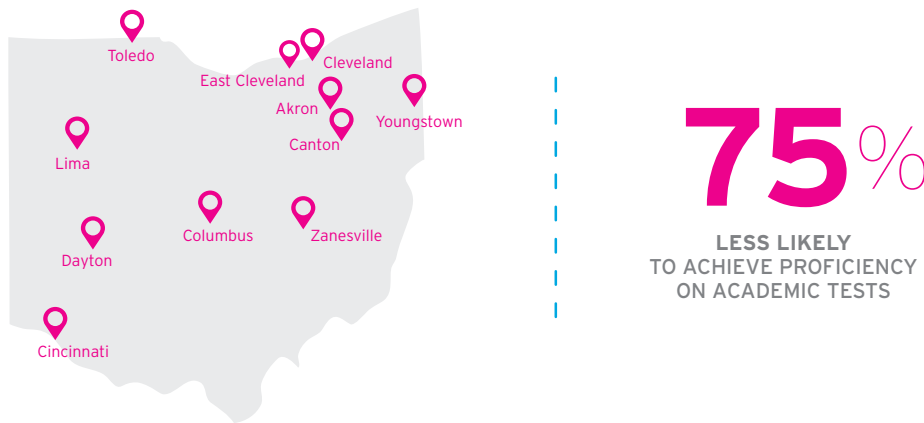
¹ The IDEA defines "special education" as "specially designed instruction" that adapts, as appropriate to the child's needs, "the content, methodology, or delivery of instruction ...to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction . . . that apply to all children." 34 C.F.R. § 300.39(b)(3). "Related services" are "developmental, corrective, and other supportive services . . . required to assist a child with a disability to benefit from special education." 34 C.F.R. § 300.34(a).

In addition, students must receive both their specialized instruction and any related services in the Least Restrictive Environment (LRE). This means that students with disabilities must be educated in classrooms with their non-disabled peers to the maximum extent appropriate. Not only is inclusion mandated by law, research and experience demonstrate that educating children with and without disabilities together has positive effects for both groups.² Most children with disabilities, when provided with appropriate special education, can succeed in the general education setting.³

The Problem

In Ohio, if you are a student with a disability going to school in a large urban district, your chances are much greater for NOT being educated in the regular classroom and NOT achieving even basic academic proficiency.

DRO AND IT'S CO-COUNSEL GATHERED EVIDENCE OF VIOLATIONS OF FAPE IN 11 OHIO SCHOOL DISTRICTS



DRO and its co-counsel gathered an overwhelming amount of evidence of systemic violations of FAPE in 11 school districts. Eight of these districts are large urban districts,⁴ and three are smaller districts⁵ with similar characteristics as defined by the Ohio Department of Education.⁶ Combined, these 11 Districts educate approximately 40,645 students with disabilities, which is about 16% of students with disabilities in Ohio. In these 11 Districts, the expert found that academic performance by students with disabilities is remarkably low; they are as much as 75% less likely to achieve proficiency on statewide academic tests as students with disabilities in other districts.⁸ This should not be happening, and is the reason why the settlement is so important.

In these 11 Districts, the expert found that academic performance by students with disabilities is remarkably low.

2 Thomas Hehir & Lauren I. Katzman, *Effective Inclusive Schools: Designing Successful Schoolwide Programs* 143-44 (2012)

3 Hehir Report at p.23 (available at <https://www.disabilityrightsohio.org/assets/documents/report-of-dr-thomas-hehir-redacted.pdf>)

4 The large urban districts include: Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown.

5 The three smaller districts include: East Cleveland, Lima and Zanesville.

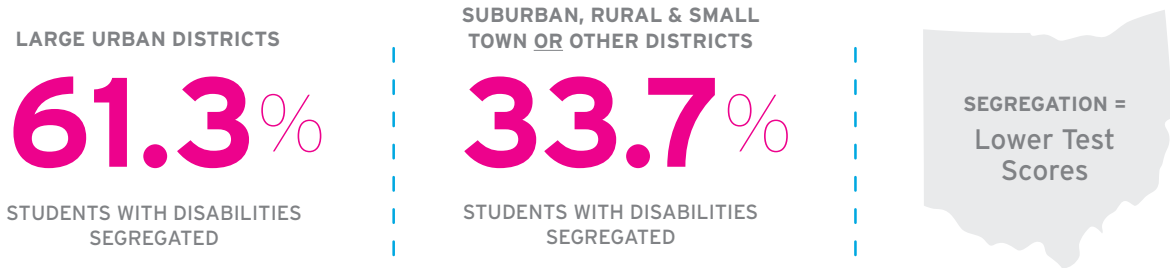
6 <http://education.ohio.gov/Topics/Data/Report-Card-Resources/Report-Card-Data-Forms-and-Information/Typology-of-Ohio-School-Districts> (last visited Sept. 25, 2019).

7 Calculated from ODE, 2018-2019 Report Card data available at: <https://reportcard.education.ohio.gov/> (last visited Sept. 25, 2019)

8 Hehir Report at p.23 (available at <https://www.disabilityrightsohio.org/assets/documents/report-of-dr-thomas-hehir-redacted.pdf>)

Dr. Thomas Hehir, one of the nation's leading experts on special education, analyzed Ohio's data on school districts and students with disabilities. He found that students in large urban districts were highly segregated, with 61.3% spending 21-100% of their time in separate classrooms.⁹ In comparison, in suburban, rural and small-town school districts collectively, only 33.7% of students with disabilities were segregated in this way.

STUDENTS WITH DISABILITIES IN LARGE DISTRICTS ARE HIGHLY SEGREGATED



Research, including long-term studies sponsored by the U.S. Department of Education, has documented that segregation of students with disabilities results in poorer academic outcomes.¹⁰ Ohio's data, analyzed by Dr. Hehir, show the same negative impact. He evaluated student performance as measured by statewide achievement test results. These tests are designed to evaluate whether students meet a minimum level of proficiency in language arts and math. Throughout the State, Dr. Hehir saw a strong association between segregation and low student performance on statewide achievement tests. **Across Ohio, in districts where more students with disabilities were segregated from students without disabilities, scores on statewide tests were lower.** In addition to low academic achievement, results also indicated that segregation leads to poor post-graduation outcomes.

The largest predictors of students' success in pursuing post-secondary education, such as college or vocational school, are inclusion in regular classrooms and passing the required graduation test.

Many of Dr. Hehir's findings were confirmed during an on-the-ground review of three of the 11 districts by expert Dr. Mary Jo Dare and her colleagues, former Special Education Directors from Indiana. Following a review of 600 students' records and observations of classrooms, several inappropriate practices and a lack of appropriate instruction and services were identified. These included unnecessary segregation and a lack of behavior supports, transition services, and assistive technology. In particular, Dr. Dare and her colleagues observed that "resource rooms," which should be used to provide brief "pull-out" services, were instead being used as the primary place of instruction for many students with disabilities. In addition, stakeholders and school staff interviewed by the Dare Team voiced concern about the inappropriate use of resource rooms in their schools and indicated that often students would never return to regular classrooms from resource rooms or other segregated classrooms as they progressed in their educations.

⁹ Consistent with the U.S. Department of Education's reporting system and national practice, Dr. Hehir refers to students who spend 80-100% of their time in regular classrooms as "included." Hereinafter, Plaintiffs do the same.

¹⁰ See Jose Blackorby et al., What Makes a Difference? Influences on Outcomes for Students with Disabilities 7-7, 7-17 (Feb. 2007); Mary Wagner & Jose Blackorby, Overview of Findings from Wave 1 of the Special Education Elementary Longitudinal Study (SEELS) 24 (Jun. 2004); Mary Wagner et al., What Makes a Difference? Influences on Postschool Outcomes of Youth with Disabilities: The Third Comprehensive Report from the National Longitudinal Study of Special Education Students 4-4 & Table 4-5 (Dec. 1993).

The Solution

A Shared Goal of Improving Integration and Academic Achievement

The good news is that DRO, working with its co-counsel and the State of Ohio, has developed a roadmap for addressing these problems through a comprehensive settlement agreement that was informed by the findings of the experts. The settlement commits the State to improving rates of integrating students with disabilities in general education settings, and improving their academic achievement, particularly in the 11 Districts where our experts found systemic denials of FAPE.

The goal of the settlement agreement is to improve the overall quality of special education and related services for students with disabilities across the State, and, in particular, in the 11 identified Districts, and to improve overall results for students with disabilities. It includes additional support by the Ohio Department of Education for school districts, particularly the 11 Districts, so that they can meet the requirements of federal law. After the settlement agreement is approved by the Court, it will be in effect for five years.

Academic achievement is strongly correlated with students being prepared for adult life, including additional education and employment.

The process of improving achievement and integration of students with disabilities will begin with a new statewide plan that the Ohio Department of Education, in consultation with an advisory group that includes two of the experts who evaluated data for DRO and its co-counsel, will develop in the first year of the settlement agreement. The statewide plan must include specific steps to help the 11 Districts meet or exceed the targets the State sets and reports to the federal government for student achievement, including the number of students integrated into the regular classroom.

INTEGRATION =
**Better Academic Achievement
Higher Graduation Rates
& Rates of Employment**



The settlement's focus on these outcomes is important. Academic achievement is strongly correlated with students being prepared for adult life, including moving on to additional education and employment. Available data strongly supports that students with disabilities who are integrated in general education settings with appropriate supports and accommodations have significantly better academic achievement, graduation rates, rates of participation in post secondary education, and rates of employment.

Focus on Improving Literacy

Another important feature of the settlement is a focus on the educational foundations of literacy and language. For many children with disabilities, the failure to provide effective literacy instruction is a problem for the duration of their education. Children who have not learned to read by third or fourth grade experience poorer academic outcomes. The settlement requires Ohio to provide additional support for increasing student literacy including through Regional Early Literacy Specialists.

Improving Access to Services

In addition, the settlement requires that the new statewide plan developed by the Ohio Department of Education, in improving special education services available to students with disabilities, emphasize the use of assistive technology and universal design for learning (“UDL”). Assistive technology is equipment that students with disabilities may need to participate in school activities. UDL is a way of teaching that uses different methods to teach the same material so as many students as possible understand what is being taught. Both of these are essential elements for helping students with disabilities fully participate in the classroom and succeed in school.

The settlement also requires a focus on implementing positive behavior supports so that all students feel safe and have the help they need to stay in school. Finally, the settlement requires an increased focus on strategies for improving the transition to post-secondary education for students with disabilities. This could include making sure that students are ready to graduate from high school and are prepared for life after school, and that additional training for teachers and school professionals is provided so that they can create better individualized plans for each student, as required by federal law.

THE SETTLEMENT REQUIRES THE NEW STATEWIDE PLAN TO:



Additional Support for Districts

Importantly, under the settlement, each of the 11 Districts will have its own improvement plan, which the State will monitor and enforce. The improvement plans will be individualized to the specific needs of each district; providing what that district needs in order to meet or exceed the targets the State sets and reports on to the federal government for student achievement. This includes the number of students integrated into the regular classroom.

Ohio’s new Urban Support Team is also contained in the settlement, with a requirement that Ohio provide that team with enough leadership and staff to provide support for the 11 Districts. The Urban Support Team will help the 11 Districts identify barriers to student achievement and integration. They will then work together to develop strategies to overcome these barriers. Lastly, the settlement requires that Ohio provide professional development to school administrators and teachers in the 11 Districts.

Training will be designed to address barriers to integrating students with disabilities and improving rates of academic achievement.

Ongoing Assessment

The Advisory Group will assess the State's progress and determine whether the outcomes required by the settlement are being achieved. The plan must include a mechanism for modifying plans, as necessary, to meet these outcomes. The agreement will be implemented over a period of five years and includes a dispute resolution process that allows DRO and its co-counsel to bring concerns to the Ohio Department of Education if Ohio is not meeting the settlement's objectives. If those concerns cannot be resolved with the help of the Advisory Group or mediation, then DRO and its co-counsel can go to the Court, if necessary, to enforce the settlement so that the anticipated improvements in outcomes are achieved.

THE ADVISORY GROUP WILL ASSESS THE STATE'S PROGRESS AND DETERMINE WHETHER THE OUTCOMES REQUIRED ARE BEING ACHIEVED.



WITH A SPECIAL FOCUS ON

11 districts

OVER A PERIOD OF

5 years

Conclusion

In this landmark settlement, DRO and its partners at Bazelon and Steptoe have successfully worked with the Ohio Department of Education to secure a comprehensive agreement that focuses on improving outcomes for students with disabilities in real and concrete ways. It outlines important strategies and includes additional resources and support for school districts so that students with disabilities can get the education they deserve.



DISABILITY RIGHTS OHIO
200 Civic Center Dr.
Suite 300
Columbus, Ohio 43215-4234

614-466-7264 or 800-282-9181
FAX 614-644-1888
disabilityrightsohio.org

**OHIO DISABILITY RIGHTS LAW
AND POLICY CENTER, INC.**