

The Grossmont Union High School District's Special Education Program:

Case Study

on

How Segregating Students With Disabilities Leads to Segregation by Race and by Home Status.

Report/Complaint by:

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Office of Civil Rights
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Follow up to Complaint #09-11-1248, May 11, 2011.

U.S. Department of Education

Office of Civil Rights

Updated Complaint Regarding the Grossmont Union High School District's systematic violation of the LRE Provisions of IDEA-2004. (Prior Complaint # 09-11-1248, May 2011)

Jerry L. Hobbs, NBCT Teacher, against the Grossmont Union High School District

Background:

The Grossmont Union High School District (GUSHD), located in eastern San Diego, serves 21,709 students in grades 9-12. The GUHSD consists of eleven comprehensive high schools, and several other, smaller schools including one continuation high school, two alternative education sites, four special education facilities, a middle college high school program, a Regional Occupational Program (ROP) and an adult education program. Approximately 42% percent of the high school students are white and 39% percent come from Hispanic-Latino. Only 6.80% of the district's students are African-American with the balance being Two or More Races (6.90%) or Asian, Filipino, Pacific Islander, Middle Eastern, and Native American backgrounds.

The Complaint (Barriers to FAPE/LRE):

Even AFTER the Office of Civil Rights prior intervention (see 2011 Complaint), the GUHSD continues to consistently and systematically violate the "Least Restrictive Environment" (LRE) provisions of the Individuals with Disabilities Education Act (IDEA-04). GUHSD's continued segregation of students by disability has also led to the disproportionate segregation of students by race. In other words, when OCR staff requests disaggregated data they will see that African-American and Latino-American students are disproportionately being served in the most segregated settings (i.e. Separate Schools or Separate classrooms at each school). Specifically, this complaint will provide information regarding violations of Sections 300.550, 300.551, 300.552, 300.552 (Non academic settings) and 300.306 (Non academic services). Additionally, the GUHSD fails to train and to direct the appropriate staff on the guidance provided by *Roncker v. Walter* (6th Circuit, 1983), *Daniel R.R. v. State Bd. Of Education* (5th Circuit 1989), *Barnett v. Fairfax county School Board* (4th Circuit, 1991), *Oberti v. Board of Education of Borough of Clementon School District* (3rd Circuit, 1993), and *Sacramento City Unified School District v. Rachel H.* (9th Circuit, 1994)

Many systemic barriers to inclusion still exist resulting in the data shown on **Appendix #1**, "District Level Special Education Performance Report Annual Performance Measure, CDE, CASEMIS 2015) As a result, thousands of students in the GUHSD continue to face segregation and discrimination based on their disabilities. Additionally, these students with disabilities are hobbled by a "less than equal" public education, making them ill prepared to face the transition to adulthood. It is hoped that, by filing this formal complaint, the Office of Civil Rights and/or the California Department of Education will require the GUHSD to remove the barriers that have existed for decades and, but for the intervention of OCR/CDE, will continue to exist within the GUHSD.

Segregation of Students Equals Denial of FAPE/LRE:

According to data compiled by the California Department of Education's (CDE) Assessment, Evaluation and Support Unit, the GUHSD also runs one of the most segregated special education programs in California and the nation. And, there is NO basis for the segregation. **Appendix #2** clearly demonstrates that students at some of the separate schools only have mild/moderate disabilities (i.e. Specific Learning Disabilities, Speech Language, Other Health Impaired, etc). In other words, after high school, these students will be expected to integrate into the "mainstream" and to be successful. The research is replete and compelling: High school students educated for most the school day in separate classrooms and/or at separate schools----segregated away from their non-disabled peers---do not enjoy the same success as high school students who are educated in integrated settings.

According to national data, for examples, students with the qualifying disability of Specific Learning Disability are only educated in separate schools LESS than 1% of the time. This is not the case at the GUHSD. (See Appendix #2 as just one example of how GUHSD segregates even the most mildly disabled students.)

Data compiled by CDE provides prima facie proof of segregation and discrimination. Of the 2,890+/- students with disabilities only **38.17%** spend eighty percent of their day in classes with non-disabled peers as measured by Indicator #5A (CASEMIS 2015: Appendix #1 District Level Special Education Annual Performance Report Measure for Grossmont Union High School District). Incredibly, **even AFTER OCR's 2011 intervention, 9.52%** of those students who have disabilities are educated in segregated, separate facilities, not at comprehensive high schools. Another 20.03% spend less than 40% of their school day with non-disabled peers. As a result of this pervasive segregation, only **60.38%** of the GUHSD's students with disabilities are graduating with a diploma (Appendix #1).

An analysis of data provided by the CDE Special Education Division demonstrates that this denial of a "free and appropriate education in the least restrictive environment" is occurring even though the overall statistical makeup GUHSD's students with disabilities mirrors the makeup of students with disabilities in San Diego County, California and the United States In other words, it cannot be said that state and national benchmarks for special education compliance somehow do not apply due to special circumstances within the District.

The GUHSD is using the segregated classrooms and separate schools to "re-segregate" its schools by race. If one does the 'drill down' on the data, it becomes clear that the separate special education settings (classrooms and separate schools) have HIGHLY DISPROPORTIONATE numbers of African-American and Latino-American students. For example, while enrollment "rolls" throughout the year at my school (R.E.A.C.H. Academy), at any given time 40%-70% of the enrolled students identify as either African-American or Two Races (with AA being one of the two). It should be remembered that the district's combined enrollment of African-American and Two Race students is around 13%. Yet, enrollment of African-American students at my school, R.E.A.C.H. Academy (i.e. the "behavior schools) has exceeded 70% at some points in time.

GUHSD now “whitewashes” students who self-identify as “African-American” by entering them into the student information system as “Non-Hispanic White” or “Other” or “Not Declared”. This has been done in response to my raising the issue of DISPROPORTIONALITY to the Assistant Superintendent, Theresa Kemper. I don’t believe (personally) that Ms. Kemper order the change. But, the Special Education Department has made the change in response to the allegations of segregation by race. This “whitewashing” of African-American students has led to a precipitous decline in the number of enrolled students who are African-Americans. It also, by magic, “addresses” the disproportionality issue.

The GUHSD also segregates foster youth living in group homes into disproportionately restrictive, segregated settings. Using R.E.A.C.H. Academy as an example, nearly 40% of our total enrollment at given points in time has been either youth experiencing foster care (group home in most cases) or homelessness.

The GUHSD Special Education staff relies on a sense of paternalism (insipid racism in my view) to explain away the students who are in segregated settings. While it is true, when taken separately, each of the separate schools can look like they are great interventions for students, collectively this paternalism results in the mass re-segregation by disability, ethnicity and race. GUHSD Special Education seems to forget that high schools students with mild/moderate disabilities are only a few short years away from living “out in the world”---not separated from it.

From experience I can tell you that many of GUHSD’s separate schools are created to house “walking drop outs” (not my moniker, the District’s). In other words, the comparison on Appendix #1 is very compelling. GUHSD relies on separate classrooms and separate schools at much high levels than most comparative districts----at rates 3X to 8 X higher. Not surprisingly, GUHSD’s Graduation Rate is one of the LOWEST of all the comparative school districts in San Diego County. For comparison purposes I’ve also included some “Union High School Districts” not in San Diego County but districts with similar demographics and district design. To be clear, students are moved to one of the separate schools as an intentional precursor to them dropping out. The separate schools are not, in many cases, a “second chance” but rather a way to become invisible.

While the GUHSD has made some MODEST gains in LRE (80% or more) over the past seven years (7) these gains amount to only an overall 10% improvement in the number of students being educated with non-disabled peers for 80% of the school day.

The U.S. Department of Education’s Office of Special Education works with each state to set benchmarks for LRE compliance. CDE has set the compliance benchmark for Indicator #5A (Percent of Students Spending More than 80% of Their Day in General Education) at **49.0%**. This is a substantial REDUCTION in the CDE Compliance standards in place when my first complaint was filed. Yet, GUHSD is still falling way short.

Denial of FAPE/LRE Results in Low Graduation Rates and Low Academic Achievement:

High school special educators know that “high school classes offer students with disabilities more than preparation for work. They also may gain”:

- membership (Schnorr, 1997)
- social relationships (Kennedy & Itkonen, 1994)
- access to interesting core curriculum (Jorgensen, 1998) and
- increase in literacy (Ryndak, Morrison, & Sommerstein, 1999)

Special educators should not be coerced to “defend” the LRE provisions of IDEA-04 to other special educators, to general educators or to District staff.

Barrier #1: *GUSHD fails to provide the full range of supplementary aids and services to students with disabilities as required.* [20 U.S.C. Sec. 1412 (a)(5); Cal. Ed. code sec. 56364]

This barrier still EXISTS although some progress has been made. (Language from the original 2011 complaint is included here since it still applies.

The term “supplementary aids and services” means aids, services and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate.[20 U.S.C. Sec 1401 (29).]

As a Teacher-Advocate for the GUHSD, I now work at R.E.A.C.H. Academy. My case load is much smaller than when at Granite Hills High School. But, my colleagues at the comprehensive sites are still reporting that many of their students are very high-functioning students with a Speech-Language Impairment (SLI), a Specific Learning Disability, Autism or Emotional Disturbance. The vast majority of their current students, if enrolled in another district, would be in general education classes for at least 80% of their day. But, at the GUHSD, supplementary aides and services are still NOT mentioned as much as “alternative settings” (code for separate classrooms, separate schools)

Because of the sheer number of IEPs (n=300 +/-) done at many of GUHSD’s comprehensive school sites, standard practice is to limit IEP meetings to one hour or less. Teacher-Advocates are told to concentrate on discussing the prior year’s transition plan and the progress on goals. The IEP Team then discusses the new annual goals. Rarely is there even time to have a meaningful discussion about the supplementary aids and services that are required to support the student in the general education environment. I have not had a single IEP Team meeting have a meaningful or lengthy discussion of what supplementary aids or services might be needed to support a student’s inclusion in general education classes.

Additionally, a review of IEP files will reveal that Advocate Teachers within the GUHSD are taught to steer away from many of the most common supplementary aids and services that could be deployed to assist our students be successful in general education. A review of IEP files would also reveal that many fairly common supplementary aids (i.e. peer tutor, note taker, books

on tape, etc) are not utilized extensively at GUHSD because “if the student needs that much support they should stay in the self-contained” (segregated) classes.”

Barrier #2: *GUSHD tracks students into self-contained (segregated) special education classes based on primarily ONE measurement: the student’s reading level. This results in very bright students with language-based disabilities being kept in “modified” classes that do not keep their interest or meet their individualized educational needs.*

Barrier #2 still exists on some campuses. A review of IEP files and interviews with teachers will reveal that the IEP Team is advised to keep “low readers” in a Reading/English two period block. The IEP Team’s are also advised that the “low readers” just can’t be successful in general education. Thus, any student in the two period Reading/English block is automatically tracked into self-contained (segregated) science and social studies courses. This means that all four, core academic subjects will be taught in segregated, self-contained classes. Oddly enough, this barrier continues to exist in spite of the fact that no systematic, district-wide, secondary reading intervention exists. Of course, there are several “around the district” but no real push to train staff to deliver them with fidelity. (See Barrier #10)

Barrier #3: *Through the I-9 Induction IEP process incoming 9th grade students are tracked into segregated, self-contained classes for most of their core subjects even though most of these students have demonstrated success, with support, in an inclusion model while in middle school.*

Barrier #3 still an issue---but to a lesser degree. If OCR staff reviews Appendix #1, it is clear that GUHSD’s “feeder districts” are serving students with disabilities in more INTEGRATED, INCLUDED settings than is GUHSD. This, in effect, means that GUHSD is STILL using the I-9A induction process and review process to RESEGREGATE 9th graders into separate classrooms on comprehensive campuses. If OCR staff reviews incoming freshmen I-9 IEP files will reveal that the tracking into segregated classes comes with little regard to the students’ prior, more inclusive, placement. Additionally, the I-9 teams spend little time talking about what supplementary supports and aids might be needed to support the student in the general education classes.

Note here data on Appendix #1. It is clear that GUHSD’s “feeder” districts provide LRE significantly more than does GUHSD. As a consequence, overall student achievement is much higher at the “feeder” districts. Thus, the argument cannot be made that GUHSD merely inherits discriminatory placements and practices. It is clear that students often come to GUSHD from LRE educational environments but then are placed, by GUHSD staff, into more restrictive settings.

Barrier #4 *Access to the general education curriculum is being rationed within the GUHSD due to general education classes being “highly impacted.” As a result, students with disabilities are at the end of the line when it comes to access to courses. Teacher Advocates have been advised to limit how many students they allow into general education courses because these courses are already overenrolled.*

Special education staff in the GUHSD continue to address emails from general education department chairs and site administrators who seek to “ration” the seats in general education courses. Current emails still exist which suggest that there are only a limited number of general seats in given courses. Thus, special education staff is ask to ration according to “ability to benefit” without additional support or supplementary aids and services.

Barrier #5: *The content, courses and textbooks used in the separate special education courses MANY TIMES do not meet always meet the standards set by California’s Department of Education.*

The mere existence of “general education textbooks” on a shelf in a separate special education do NOT mean that they are anything but compliance placeholders. Many separate special education classrooms, by the teachers’ own admissions, still use primarily texts like AGS. These texts do Not provide the same rigor or detail as general education textbooks.

Self-contained courses, even if “modified” should provide meaningful access to general education coursework taught to the standards that are outlined in California’s curriculum guidelines and frameworks. In addition, the Williams Act guarantees that ALL students in California will have access to textbooks that are approved for the general education curriculum.

Barrier #6: *Failure to fully explain the full continuum of special education supports that can be offered results in parents agreeing to allow the continued segregation of their children. Consent for segregation is gained from parents who are told that there are two choices: self-contained (segregated) classes with “lots of support” or general education courses with little/no in-class support. Parents are told the only support for G.E. students will be provided if the student*
agrese to give up their elective course in order to enroll in a Special Education Study Skills (Homework Help) course.

Barrier #6 still exists. However, the GUHSD has made some progress in this area. But, parents are still given the “fear of failure” reasoning to encourage them to ensure success by accepting segregated settings. If staff from the Office of Civil Rights or from the California Department of Education were to conduct site visits to any of the high schools within GUHSD you would likely hear something like this as a defense for the pervasive segregation: “We’re not segregating the kids. It is the parents who want their kids segregated in these modified classes. The parents just don’t want their kids to fail!”

There is some truth to these statements. When parents are given two, diametrically opposed options: G.E. no support or special education with lots of support the parents do often demand segregation. But, the IEP Teams within GUHSD are not sufficiently explaining to parents both

the challenges and rewards of successfully completing a rigorous course of study in the general education curriculum. More importantly, the special education professionals on the IEP Teams are not explaining the bias toward general education placement imbedded in IDEA-04 LRE provisions. More importantly, the District is dissuading Teacher-Advocates from offering the full range of supplementary supports and aids as required by IDEA-04.

As noted earlier, IEP Teams spend little, if any, time discussing the supplementary supports and aids that could be deployed to support students in the general education curriculum. In the rare cases where supplementary aids and supports are discussed, parents often agree to their son/daughter trying general education courses.

Barrier #7: *Students with disabilities who wish to enroll in general education classes are strongly suggested (required?) to enroll in a study skills course through the Special Education Department. This practice has the effect of denying access to elective courses that might enhance the students' preparation for transition to post-secondary life. This policy/practice also inhibits students with disabilities from participating in career preparation courses offered by the Regional Occupational Program (R.O.P.).*

Barrier #7 still exists on many comprehensive high school campuses. In order to receive special education support in general education classes the student is asked to give up one (and sometimes the ONLY) elective in order to make room in his/her schedule for the Special Education Studies Skills course. The effect of this practice/policy is to penalize students for their disabling condition by depriving them of an important elective course.

OCR can validate this concern by almost cursory transcript review. Of the thirteen elective courses required (65 semester credits) how many are "Study Skills" versus an elective that is more in keeping with a student's interest.

This may not seem like an important issue. However, GUHSD's relatively low graduation rate (even when compared to demographically similar districts) is driven, in part, by boredom the lack of a "hook" (an enjoyable elective). Thus, students with disabilities become less engaged and more likely to drop out.

Because the majority of special educators are teaching the self-contained courses at my school, Granite Hills High School, we do not have the additional staff to provide any kind of meaningful "in-class" support for student with disabilities enrolled in general education classes. It becomes a sink or swim situation for many of them. As a result, many students with disabilities decide to keep their elective by enrolling in segregated core content classes that do not require a study skills course because the standards are much lower. Thus, most students just don't see the point in giving up their elective in order to risk failure in general education.

Barrier #8: *Students with behavior issues are denied meaningful access to general education courses. As expected, this disproportionately affects students whose primary disabling condition is “Emotional Disturbance.”*

The GUHSD deserves credit (and fairly high marks) for nearly eliminating this barrier. There is now an LRE process involved and behavior specialists are called upon to provide support PRIOR to students being moved to more restrictive settings. Barrier #7 still exists but is probably less than in most high school districts with which I am familiar.

Barrier #9: *Students with disabilities are being denied meaningful access to courses and certificates offered by the Regional Occupational Program. Since the GUHSD offers little/no in-class support for these R.O.P. courses and since most of these courses consist of a three or four-year sequence of courses, enrollment in and completion of R.O.P. courses is relatively low. Since the GUHSD has also eliminated many Applied Arts classes access to R.O.P. courses is very important for transition planning.*

Barrier #9 sadly still exists. However, the R.O.P. program replacement does not provide data. OCR staff would need to make a specific request in this area.

Barrier #10: *The GUHSD does NOT have a district-wide, research-based and validated reading intervention. Students with dyslexia or language-based disabilities are still, for the most part, being denied any meaningful reading interventions.*

The GUHSD has a “hodgepodge” of reading programs but there isn’t much fidelity to one proven method. Thus, students can enter 9th grade reading at the 5th grade level and may (often?) exist high school reading only marginally better. OCR should require the district to provide at least ONE standard, research-based high school reading intervention on a district-wide basis.

Barrier #11: *GUHSD creates silos of funding (i.e. special education vs. general education) that inhibit innovative interventions that will help all students, including students with disabilities.*

Barrier #10 not fully addressed but good progress made. A work in progress for sure. The main issue on the funding front is that too much of the funding is being directed to funding SEGREGATED settings---drawing dollars away from inclusion support (which is badly, badly needed.)

Request for Intervention by the Office of Civil Rights:

The Office of Civil Rights will see, upon investigation, that the preponderance of the evidence supports this claim that students with disabilities are being denied meaningful access to the general education curriculum within the GUHSD. As a consequence of this denial of FAPE/LRE, these students are achieving at much lower levels and are graduating at alarmingly dismal rates. Not only are they doing very poorly on NCLB required assessments but many of

them are earning Ds and Fs in modified coursework---this in spite of the fact that many have mild learning disabilities or speech and language impairments.

It is clear that a segregated education yields poor academic achievement and abysmal graduation rates. Students with disabilities who graduate from GUHSD's segregated program are ill prepared to be successful in college or in most careers. Thus, in effect, they are being denied an equal opportunity to have successful, happy, productive lives.

The denial of FAPE is also resulting in the "re-segregation" by race and home status (i.e. foster youth and homeless youth) of some of our poorest, most vulnerable students.

Many barriers to inclusion and to academic/social success still exist in the GUHSD. They have existed for decades. It is clear that without the intervention of OCR or CDE students in the GUHSD will continue to be segregated in way that denies their rights under IDEA-04 and sets them up for dismal futures.

