

**BROKEN PROMISE**

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

**SUMMARY**

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Panel Chair**

**June 3, 2010**

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

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

The panel's conclusions are as follows.

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

With respect to overall LRE, Pennsylvania's national status changed from 49<sup>th</sup> in 2005 ([www.ideadata.org](http://www.ideadata.org)) to 43<sup>rd</sup> ([www.PaTTAN.net](http://www.PaTTAN.net)). However, a much more accurate picture of changes in LRE in Pennsylvania may be gained by looking at the data for specific disability groups. For example, the categories of mental retardation, multiple disabilities, hearing impairment, orthopedic impairment, visual impairment, and deaf-blindness show minimal or negative changes in LRE (for 80% or more of the school day) over the life of the Settlement Agreement.

2. Most provisions of the SA were not met

Provisions that were met included development of posters, the Supplementary Aids and Services Toolkit, and the Needs Assessment, all of which relate to increasing awareness of disability or resources available to consider LRE. Also addressed were provisions relating to maintaining the IEP format and development of a single plan.

The majority of provisions, including those relating most clearly to regulation and enforcement, were met minimally or were considered by the Panel not to have been met. This included major provisions relating to LRE monitoring and corrective action plans for the most segregated school districts in Pennsylvania and the development of a comprehensive training and technical assistance plan for the commonwealth.

3. There remains substantial disagreement between PDE and Panel members on key issues of LRE

PDE refuses to believe that there is a serious problem with LRE in PA whereas the

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

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

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

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

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

6. The timeline of this Settlement Agreement was cut short

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