A Structure For Legal Interpretation of the Individuals With Disabilities Education Act: *Oberti v. Board of Education*, 995 F.2d 1204 (3d Cir. 1993)

The Individuals with Disabilities Education Act (IDEA)[1] requires school systems to establish procedures that allow disabled children to receive their education in the same classrooms as nondisabled children.[2] Specifically, school districts may not segregate disabled pupils from regular classrooms[3] unless the se-

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1. 20 U.S.C. §§ 1400-1485 (1988 & Supp. IV 1992). Congress passed the first predecessor to the IDEA in 1966 when it enacted Title VI of the Elementary and Secondary Education Amendments of 1966, Pub. L. No. 89-750, 80 Stat. 1911 (1966), entitled "Education of Handicapped Children." In 1970, Congress repealed Title VI and created a separate act, the Education of the Handicapped Act, when it passed Assistance to States for Education of Handicapped Children, of the Elementary, Secondary, and Other Education Amendments of 1969, Pub. L. No. 91-230, 84 Stat. 121 (1970). Congress sought to expand these provisions in 1974 when it enacted the Education of the Handicapped Amendments of 1974, Pub. L. No. 93-380, 88 Stat. 484 (1974). Congress, however, soon repealed these provisions and enacted the Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773 (1975). Congress broadly expanded the 1975 Act when it enacted the Education of the Handicapped Act Amendments of 1990, Pub. L. No. 101-476, 104 Stat. 1103 (1990). The 1990 amendments changed the title of the Act to its current identity.

2. 20 U.S.C. § 1412(5)(B) (Supp. IV 1992). The school system must implement procedures ensuring that:

> [T]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily . . .

Id. The regulations under the Act provide this mandate. *See* 34 C.F.R. § 300.550 (1992). Under the IDEA, the federal government provides states with funds for the education of disabled students. To be eligible to receive the funds, states must implement the procedures mandated in the Act. *See* 20 U.S.C. § 1412 (Supp. IV 1992).

3. 20 U.S.C. § 1412(5)(B). *See generally* JoEllen Lane, Note, *The Use of Least Restrictive Environment Principle in Placement Decisions Affecting School-Age Students with Disabilities*, 69 U. DET. MERCY L. REV. 291, 292-95 (1992) (noting that both the IDEA and the Rehabilitation Act clearly prefer educating disabled students in the regular classroom); Allan G. Osborne, Jr., Commentary, *The IDEA's Least Restrictive Environment Mandate: Implications for Public Policy*, 71 Educ. L. Rep. (West) 369, 370 (Feb. 13, 1992) (noting importance of least restrictive environment when determining whether a proposed education placement for a disabled child complies with the IDEA).

verity of the disability renders integration impractical.[4] The parameters of this mandate, referred to as "mainstreaming"[5] or placing the child in the "least restrictive environment,"[6] remain uncertain because the Supreme Court has not squarely addressed the issue.[7] The federal courts of appeals have articulated different tests to determine whether a school district has complied with the mainstreaming requirement.[8] In *Oberti v. Board of Education*,[9] the Third Circuit Court of Appeals held that the IDEA prohibits placing a disabled child in a special classroom if the child could be educated satisfactorily in the regular classroom with supplementary aids and services.[10]

In *Oberti*, the parents of a child afflicted with Down's Syndrome[11] challenged their school district's decision to place their son, Rafael, in a special education class.[12] The Obertis

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4. 20 U.S.C. § 1412(5)(B). *See* Briggs v. Board of Educ., 882 F.2d 688, 693 (2d Cir. 1989) (determining that the severity of the child's disability rendered integration inappropriate); A.W. v. Northwest R-1 Sch. Dist., 813 F.2d 158, 164 (8th Cir. 1987) (rejecting regular classroom placement because of the high cost to school district and minimal educational benefits to the child); Board of Educ. v. Holland, 786 F. Supp. 874, 880-84 (E.D. Cal. 1992) (holding that educating a moderately mentally retarded child in the regular classroom was not impractical). See Lane, *supra* note 3, at 294-96, for a discussion of the IDEA requirements regarding placement of students in regular classrooms.

5. *See, e.g.*, Linda A. Abrahamson, *The Probative Weight of the "Mainstreaming" Requirement Under the EHA*, 12 N. ILL. U. L. REV. 93, 94 (1991) (referring to the integration mandate as "mainstreaming").

6. The Act's regulations refer to the placement requirements as the "least restrictive environment." 34 C.F.R. §§ 300.550-300.556 (1993).

7. In Florence County Sch. Dist. Four v. Carter, 114 S. Ct. 361 (1993), the Supreme Court recognized that a court can require a school district to reimburse parents for education expenses incurred at a private school that meets the IDEA standards if the parents withdraw their child from a public school that provides inappropriate education under the IDEA. *See also* Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982) (focusing on provisions of the IDEA other than mainstreaming).

8. *See generally* Abrahamson, *supra* note 5, at 107-23; see also *infra* notes 25-41 and accompanying text for a full discussion of the different tests.

9. 995 F.2d 1204 (3d Cir. 1993).

10. *Id.* at 1215. *Oberti* is also significant because the school district had the burden of proving that Rafael could not be educated satisfactorily in a regular classroom environment. *Id.* at 1218-20. *See generally Full Inclusion of Students with Disabilities Upheld by Third Circuit*, NEWSNOTES (Ctr. for Law and Educ., Inc., Cambridge, MA), Summer, 1993, at 2 (noting the significance of *Oberti*'s placement of the burden of proof on the school district).

11. Down's Syndrome is a genetic defect that impairs intellectual functioning and a person's capacity to communicate. *Oberti*, 995 F.2d at 1207.

12. *Id.* The plaintiffs lived in the Clementon School District in Clementon, New Jersey. *Id.* at 1207. Before Rafael entered kindergarten for the 1989-90 school year, representatives of the school district "Child Study Team" eval-

argued that Rafael should attend the neighborhood elementary school.[13] An Administrative Law Judge (ALJ) determined that the school district rightfully refused to place Rafael in a regular classroom.[14] The Obertis filed a civil suit in the United States District Court of New Jersey,[15] claiming that the school district's refusal to place Rafael in the regular classroom violated the IDEA.[16] The district court held that the school district failed to

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uated Rafael to determine his appropriate placement. The Child Study Team recommended that Rafael attend a special education class in another school district. Rafael's parents disputed this recommendation. The parties, however, eventually agreed that Rafael would attend a "developmental" kindergarten class at Clementon Elementary School in the morning and a special education class in another district in the afternoon. *Id.* at 1207-08. The developmental class was for children not quite ready for kindergarten. *Id.* at 1207. Rafael exhibited behavioral problems in the morning class, such as toileting accidents, throwing temper tantrums, hiding under furniture, and exhibiting violence toward students and teachers, which forced the school district to place an extra aide in the class. *Id.*

At the conclusion of the school year, the Child Study Team sought to place Rafael in a full-time special education class in another district for the next school year. The Obertis objected to this and filed a request under state law for a hearing. The parties agreed to mediation and resolved to place Rafael in a special education classroom in another school district under the condition that the school district consider mainstreaming possibilities in the future. For the 1990-91 school year, Rafael attended the special education class and his behavior improved. *Id.* at 1208-09. However, the Obertis concluded that their son had no meaningful contact with nondisabled children. In January 1991, the Obertis filed a complaint alleging that the IDEA required the Clementon School District to place Rafael in the regular kindergarten classroom, thus instituting the litigation that reached the Third Circuit Court of Appeals. *See id.* at 1209.

13. The IDEA permits the parents of a disabled child to challenge the school district's placement in a state administrative proceeding. 20 U.S.C. § 1415(b)(2) (1988).

14. *Oberti,* 995 F.2d at 1210. In New Jersey, an ALJ of the New Jersey Office of Administrative Law conducts due process hearings. *Id.* at 1208 n.3. The ALJ found that the school district's placement complied with IDEA.

15. Under the IDEA, a party can request an independent review of an ALJ decision in United States district court. 20 U.S.C. § 1415(e)(2) (1988).

16. 995 F.2d at 1210. The Obertis also claimed that the school district violated Section 504 of the Rehabilitation Act of 1973. Section 504 of the Rehabilitation Act provides in part:

> No otherwise qualified individual with handicaps in the United States . . . shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .

29 U.S.C. § 794(a) (1988). The IDEA specifically allows plaintiffs to raise claims under § 504 of the Rehabilitation Act and the IDEA in one lawsuit. 20 U.S.C. § 1415(f) (Supp. IV 1992). The district court addressed the plaintiffs' Rehabilitation Act claim, but the Third Circuit found it unnecessary to address this argument because it could dispose of the issue under the IDEA. *Oberti,* 995 F.2d at 1223 n.29.

prove by a preponderance of the evidence that Rafael could not receive an appropriate education in a regular classroom equipped with supplementary aids and services.[17] The Third Circuit Court of Appeals affirmed the district court decision because the school district failed to prove its inability to educate Rafael satisfactorily in a regular classroom with supplementary aids and services.[18]

Congress enacted the Education for All Handicapped Children Act,[19] the predecessor to the IDEA, in 1975.[20] In 1982, in *Hendrick Hudson District Board of Education v. Rowley*,[21] the Supreme Court held that the Act's requirement that states

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17. *Id.* at 1210-12 (citing Oberti v. Board of Educ., 801 F. Supp. at 1392, 1396 (D.N.J. 1992) (*Oberti II*)). Prior to trial, both parties moved for summary judgment. The district court refused both motions, finding a genuine issue of material fact. *Id.* at 1210 (citing Oberti v. Board of Educ., 789 F. Supp. 1322, 1336 (D.N.J. 1992) (*Oberti I*)). After a three-day bench trial, the district court held that the school district had violated the IDEA. The district court based its holding on the testimony of expert witnesses. The court was especially persuaded by the Obertis' experts, who testified that the techniques used in the special education class could be employed in a regular classroom. *Id.* at 1212 (citing *Oberti II*, 801 F. Supp. at 1397). *See also Oberti II*, 801 F. Supp. at 1403 (noting no evidence in the record that Rafael's behavioral problems could not be solved with supplementary aids and related services). The district court found that the evidence supported the conclusion that Rafael's behavior problems in the classroom were due largely to the school district's failure to provide adequate supplementary aids and services. *Id.* at 1212 (citing *Oberti II*, 801 F. Supp. at 1403). Additionally, the court found that the school district failed to make sufficient efforts to include Rafael in a regular classroom, a violation of Section 504 of the Rehabilitation Act. *Id.* at 1212 (citing *Oberti II*, 801 F. Supp. at 1406-07).

18. *Id.* at 1220-23. The court ordered the school district to comply with the IDEA by developing a more integrative Individual Education Plan (IEP). Under the Act, representatives of the school district must develop a comprehensive written plan addressing the immediate and future treatment of the pupil. 20 U.S.C. § 1414(a)(5) (Supp. IV 1992). *See also* 20 U.S.C. § 1401(2) (Supp. IV 1992) (defining "individual education program"). The Third Circuit noted that neither it nor the district court was mandating a specific IEP for Rafael; rather, the court noted that "placement in a regular classroom is required under the Act unless the School District can show by a preponderance of the evidence that the child cannot be educated satisfactorily in a regular class with supplementary aids and services." *Oberti*, 995 F.2d at 1224 n.31. The court, however, found that the school district had not shown by the preponderance of the evidence that it could not adequately educate Rafael in the regular classroom with supplementary aids and services. *Id.*

19. Pub. L. No. 94-102, 89 Stat. 775 (1975) (current version at 20 U.S.C. §§ 1400-1485 (1988 & Supp. IV 1992)).

20. The Education for All Handicapped Children Act of 1975 contained a mainstreaming requirement virtually identical to the current version of the IDEA. *See* 20 U.S.C. § 1412(5) (Supp. IV 1992). See generally *supra* note 1 for a discussion of the statutory predecessors to the IDEA.

21. 458 U.S. 176 (1982).

provide "free appropriate public education"[22] means that states must provide instruction designed to meet the specific needs of the child, supported by services necessary for the child to benefit from the instruction.[23] *Rowley*, however, did not address the mainstreaming provision, and the Court has yet to address this provision.[24]

The federal courts have developed two distinct frameworks for determining whether a school district's placement of a disabled child violates the mainstreaming requirement of the IDEA.[25] In *Roncker v. Walter*,[26] the Sixth Circuit Court of Appeals held that even if the special classroom proved academically superior to the regular classroom, the child should be mainstreamed if similar services could feasibly be provided in a regular classroom.[27] The court explained that such a test allows courts to recognize the IDEA's strong preference for mainstreaming, while considering the need to educate some disabled children in self-contained classrooms.[28] The court recognized the propriety of considering the cost of providing special services and aids in the regular classroom, along with considering the benefits to the child.[29]

In *A.W. v. Northwest R-1 School District*,[30] the Eighth Circuit adopted the *Roncker* test.[31] The court emphasized the importance of considering the financial cost to the school system when

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22. 20 U.S.C. § 1412(1) (Supp. IV 1992).

23. *Rowley*, 458 U.S. at 188-89. Specifically, *Rowley* articulated a two-step test to determine whether the state complies with the Act's requirements: (1) Has the state complied with the procedures set forth in the Act?; and (2) Is the individualized education program reasonably calculated to enable the child to receive educational benefits? *Id.* at 206-07.

24. The mainstreaming issue focuses on § 1412(5), while *Rowley* involved an interpretation of § 1412(1). *See Rowley*, 458 U.S. at 180-81. Both sections, however, discuss requirements that states must meet to receive federal aid. *See generally* 20 U.S.C. § 1412 (Supp. IV 1992). See *supra* note 7 for a brief discussion of the Supreme Court's most recent IDEA rulings.

25. See generally Abrahamson, *supra* note 5, at 104-23 for a discussion of different frameworks for addressing compliance with mainstreaming requirements.

26. 700 F.2d 1058 (6th Cir.), *cert. denied*, 464 U.S. 864 (1983).

27. *Id.* at 1063.

28. *Id.*

29. *Id.*

30. 813 F.2d 158 (8th Cir. 1987).

31. *Id.* at 163-64. In *A.W.*, a disabled child and his parents brought an action to require the school district to place the child in a regular classroom rather than in a special school. *Id.* at 160-62. The district court found that the child would only minimally benefit from the regular classroom environment because of his disability and that mainstreaming did not necessitate that he be placed in the regular school. *Id.* at 161-62. The Court of Appeals affirmed the district court decision. *Id.* at 164.

determining whether a child should be mainstreamed into a regular classroom:[32] Specifically, the *A.W.* court articulated a feasibility test which requires a reviewing court to determine the economic feasibility for the school district to include the special services of the segregated setting in the regular classroom.[33]

The Fifth Circuit Court of Appeals, however, rejected the *Roncker* and *A.W.* approaches in *Daniel R.R. v. State Board of Education.*[34] The *Daniel R.R.* court criticized the *Roncker* test because it requires the court to determine the disabled child's placement, a decision more appropriately made by school officials.[35] The court viewed its task as balancing the Act's mandates to provide both a free, appropriate public education and an integrated environment.[36] The court created a two-part test to determine compliance with the mainstreaming requirement.[37] First, the court considered whether a school district can satisfactorily educate the disabled child in a regular classroom with supplementary aids and services.[38] Second, the court determined whether the school district mainstreamed the child to the maximum extent appropriate.[39] In applying the two-part test, several

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32. *Id.* at 163-64. The court emphasized "the reality of limited public funds . . ." *Id.* at 164.

33. *Id.* at 163-64. The feasibility test balances public funds against the needs of disabled children. *Id.* at 164. The court acknowledged that the Act does not require each disabled child to be provided with the "best possible education at public expense" because of the cost of the special education. *Id.* (citing *Rowley*, 458 U.S. at 188-89, 193).

34. 874 F.2d 1036, 1046 (5th Cir. 1989).

35. *Id.* at 1046. The court stated, "We believe, however, that the [*Roncker*] test necessitates too intrusive an inquiry into the educational policy choices that Congress deliberately left to state and local school officials." *Id.*

36. *Id.* at 1048. *See* 20 U.S.C. § 1412(1), (5)(B).

37. *Daniel R.R.*, 874 F.2d at 1048-50.

38. *Id.* These factors include a fact-specific inquiry that examines fully the child's disability and the school district's response to the child's needs. The court noted that "the Act does not require regular education instructors to devote all or most of their time to one handicapped child and to modify the regular education program beyond recognition." *Id.* at 1048. Further, the court noted that it was appropriate to examine "whether the child will receive an educational benefit from regular education." *Id.* at 1049. The court examined the quality of education that the child would receive in a regular classroom, balancing the benefits of the regular classroom against the benefits of being in a special classroom. *Id.* Finally, the court noted that it was appropriate to examine the effect that the disabled child would have on the education of nondisabled students. *Id.*

39. *Id.* at 1048. In support of this prong of the test, the court cited Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 201-02 (1982) (noting inquiry regarding whether child could adequately be educated with supplementary aids and services). *See also* 20 U.S.C. §§ 1412(17) (Supp. IV 1992) & 1412(18) (1988) (statutory provisions for related services).

factors in addition to academic achievement are relevant.[40] For example, integration of the child into the atmosphere of nondisabled children can, by itself, provide vital benefits.[41]

In *Greer v. Rome City School District*,[42] the Eleventh Circuit Court of Appeals adopted the *Daniel R.R.* test to determine whether a school district's plan for educating a handicapped child complied with the IDEA.[43] The Eleventh Circuit held that the school district must consider the full range of supplemental aids and services to meet the first part of the test.[44] For example, the Rome City School District did not consider providing resource rooms and itinerant instruction in the regular classroom.[45] Thus, the Eleventh Circuit concluded that the proposed placement of the disabled child in a separate classroom violated the IDEA.[46]

In *Oberti v. Board of Education*,[47] the Third Circuit Court of Appeals applied the *Daniel R.R.* test[48] and determined that the school district violated the IDEA's mainstreaming requirement.[49] The Third Circuit criticized the *Roncker* test because it fails to emphasize that, even if full-time placement in a regular classroom cannot be achieved, the school still must include the disabled child in other programs with nondisabled children whenever possible.[50]

In applying the first prong of the *Daniel R.R.* test,[51] the Third Circuit emphasized three factors.[52] First, reviewing courts should

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40. The court noted the importance of considering the nature and severity of the child's disability. *Daniel R.R.*, 874 F.2d at 1049-50.

41. *Id.* at 1049. The court stated, "[A] child may be able to absorb only a minimal amount of the regular educational program, but may benefit enormously from the language models that his non-handicapped peers provide for him." *Id.* Because of Daniel's special needs, he could not be educated satisfactorily in a regular classroom even with the addition of aids and services. *Id.* The court affirmed the district court decision that "the needs of the handicapped child and the needs of the non-handicapped students in the Prekindergarten class tip the balance in favor of placing Daniel in special education." *Id.* at 1052.

42. 950 F.2d 688 (11th Cir. 1991).

43. *Id.* at 696.

44. *Id.* at 692.

45. *Id.* The court suggested itinerant instruction by an instructor who travels from classroom to classroom. *Id.*

46. *Id.* at 699. The school district's IEP did not provide placement in the least restrictive environment because the IEP recommended placement in a self-contained special education class at a non-neighborhood school, rather than in a regular classroom. *Id.* at 698.

47. 995 F.2d 1204 (3d Cir. 1993).

48. See *supra* notes 34-41 and accompanying text for a discussion of the *Daniel R.R.* test.

49. *Oberti*, 995 F.2d at 1221.

50. *Id.* at 1215.

51. The court phrased the first part as "whether the child can be educated

consider the extent to which the school district attempted to include the disabled child in a regular classroom with nondisabled children.[53] Second, the court must balance the advantages of placing the child in a separate special education class against the benefits the child obtains in a regular classroom with supplementary aids and services.[54] Finally, the court should consider the possible negative effects of integration.[55] After considering these factors, if the court concludes that the school district correctly removed the disabled child from the regular classroom, the court must then address the second prong of the *Daniel R.R.* test.[56]

The Third Circuit determined that the school district failed the first factor because it did not adequately consider including Rafael in the regular classroom.[57] Specifically, the school district

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satisfactorily in a regular classroom with supplementary aids and services . . ." *Id.* at 1215-16.

52. *Id.* at 1216-17.

53. *Id.* at 1216. The court specifically suggested supplemental aids such as: "[S]peech and language therapy, special education training for the regular teacher, behavior modification programs, or any other available aids or services appropriate to the child's particular disabilities." *Id.* The court further emphasized the regulations' language, stating that "the school must also make efforts to modify the regular education program to accommodate a disabled child." *Id.* (citing 34 C.F.R. pt. 300, app. C, Question 48 (1992)).

54. *Oberti*, 995 F.2d at 1221. Other courts will have to rely heavily on expert testimony in evaluating this second factor. *Id.* at 1216. Courts also must pay extra attention to the particular benefits a disabled child could obtain by communicating and interacting with nondisabled peers in the regular classroom. *Id.*

55. *Id.* at 1217. Even though including the disabled child in the regular classroom may benefit the entire class, a disabled child may be "so disruptive in a regular classroom that the education of other students is significantly impaired." *Id.* (citing 34 C.F.R. § 300.552 cmt. (1992)).

56. *Oberti*, 995 F.2d at 1218. The court phrased the second prong of the test as "whether the school has included the child in school programs with non-disabled children to the maximum extent appropriate." *Id.* See *supra* notes 34-41 and accompanying text for a discussion of the *Daniel R.R.* test.

57. *Oberti*, 995 F.2d at 1221. When Rafael was placed in the regular (developmental) classroom for the 1989-90 school year, the school district did not place him in that class with adequate management plans and special education for the teacher. *Id.* Mainstreaming Rafael in the afternoons during the 1989-90 school year was his parents' idea and not the school district's. *Id.* at 1221 n.27. Rafael's IEP for the 1989-90 school year did not include any supplementary aids or support services. *Id.* at 1221. In addition, Rafael's 1990-91 school year plan, when he was placed in a segregated classroom, contained no mainstreaming plans. *Id.* The court noted that the district court gave "due weight" to the agency proceedings because the ALJ did not consider whether the school district made efforts to include Rafael in a regular classroom with supplementary aids and services. *Id.*

failed to consider placing Rafael in a regular classroom for part of the school day.[58] With regard to the second factor, the court deferred to the district court's reliance on expert testimony[59] illustrating that the benefits of placing Rafael in the regular classroom outweighed placement in a special classroom.[60] As to the third factor,[61] the court held that the school district failed to establish that Rafael's presence in the classroom would adversely affect nondisabled children.[62] Although the school district argued that Rafael exhibited disruptive behavior, the court explained that supplementary aids and services would create a nondisruptive environment.[63] Consequently, the court held that the school district violated the IDEA mainstreaming requirement.[64]

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58. *Id.*

59. The school district's experts testified that a regular teacher would have difficulty communicating with Rafael and that the regular class schedule would have to be drastically modified to accommodate Rafael. *Id.* at 1222. The Obertis' experts, however, suggested alternative methods to educate Rafael in the regular classroom environment. *Id.* In addition, the Obertis' experts stressed the benefits Rafael would receive from being educated in a regular classroom with nondisabled children. *Id.*

60. *Id.* at 1221-22. The Third Circuit found the district court's findings not "clearly erroneous." *Id.* at 1222. The court agreed with the district court's legal decision that Rafael should not be excluded from the regular classroom unless the school district would have to modify the curriculum to such an extent that it would impair the education of other children in the class. *Id.*

61. The question to address under the third factor is whether Rafael's presence in the regular classroom would disrupt other children in the class. *Id.*

62. The school district presented witnesses who testified that Rafael's behavior in the 1989-90 kindergarten class was extremely disruptive. *Oberti*, 995 F.2d at 1222. The Obertis' witnesses, however, testified that Rafael's behavior would not be disruptive if adequate supplemental aids and services were used. *Id.*

63. *Id.*

64. *Id.* The court stated:

> We agree with the district court's conclusion that the School District did not meet its burden of proving by a preponderance of the evidence that Rafael could not be educated satisfactorily in a regular classroom with supplementary aids and services. We will therefore affirm the district court's decision that the School District has violated the mainstreaming requirement of the IDEA.

Id. Because the court arrived at the above conclusion based on the first prong of the *Daniel R.R.* test, it did not apply the second part of the test. *Id.* The court warned that if the Child Study Team developed a new IEP for Rafael that determined that he could not be educated satisfactorily in a regular classroom with supplementary aids and services, the Team would have to illustrate that Rafael would be included in regular school programs with nondisabled children whenever possible. *Id.* at 1224.

The court did not mandate a specific IEP for Rafael, but rather noted that the IDEA requires placement in a regular classroom because the school district

The *Oberti* court correctly chose the *Daniel R.R.* test over the *Roncker* test to determine whether the school district violated the IDEA.[65] School districts must give maximum consideration to mainstreaming to ensure that disabled children receive the benefits guaranteed under the IDEA.[66] By requiring the school district to prove each element of the *Daniel R.R.* test, the *Oberti* court presumes that mainstreaming provides the least restrictive environment.[67] The *Roncker*[68] test fails to recognize the possibility of partial integration because the school district need only prove the impracticability of full integration.[69] *Roncker* implies an all or nothing approach by suggesting that school districts must choose mainstreaming over total segregation only if the *totality* of services offered via mainstreaming are superior to those in the segregated classroom.[70] This implication, however, contradicts Congress's clear intent for disabled children to be educated in regular classrooms to the maximum extent appropriate.[71] The *Oberti* court's adoption of the *Daniel R.R.* test more accurately reflects congressional intent that disabled children be educated in the least restrictive environment.

Integration of disabled students requires significant training of regular education teachers.[72] The mere placement of disabled

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did not prove by a preponderance of the evidence that Rafael could not be educated satisfactorily in a regular classroom with supplementary aids and services. *Id.* at 1224 n.31. Finally, the regulations under the IDEA mandate that each child be placed in a school as close to home as possible. *Id.* The court thus recognized "a presumption in favor of placing the child . . . in the neighborhood school." *Id.* (citing Barnett v. Fairfax County Sch. Bd., 927 F.2d 146, 153 (4th Cir.), *cert. denied*, 112 S. Ct. 175 (1991)).

65. Employing the *Roncker* test in *Oberti* would not fully recognize that although a disabled child may not be able to be placed in a regular classroom, the school still must include that child in all programs with nondisabled children whenever possible. *Id.* at 1215.

66. See *supra* notes 2-4 and accompanying text for a discussion of the IDEA's intent.

67. See *supra* notes 26-46 and accompanying text for a discussion of the two tests courts have used to determine whether a school district violated the IDEA's mainstreaming requirement.

68. See *supra* notes 26-29 and accompanying text for a discussion of the *Roncker* test.

69. *Oberti*, 995 F.2d at 1215.

70. *Roncker*, 700 F.2d at 1063; *see also Oberti*, 995 F.2d at 1215.

71. See *supra* note 3 and accompanying text for a discussion of Congress's intent to educate disabled children in regular classrooms.

72. *See Full Inclusion of All Students in the Regular Classroom*, LEARNING TIMES (Learning Disability Ass'n (LDA), GA), undated, at 2 (on file with the *Washington University Journal of Urban and Contemporary Law*) (recommending that teachers in regular classrooms receive special training to meet needs of disabled students). *See also* Reed Martin, *Federal Circuit Rules on Inclusion*, LEARNING DISABILITIES ASS'N NEWSBRIEFS (Learning Disability Ass'n (LDA), Pittsburgh, PA), Sept./Oct. 1993, at 3, 14 (on file with the *Washington University Journal of Urban and Contemporary Law*) (same).

children in regular classrooms may not provide the children with adequate educational opportunities.[73] Consequently, courts should require school districts to do more than simply place disabled children in classrooms with nondisabled children.

Oberti v. Board of Education clearly mandates that under the IDEA, a school district should include a disabled child in the regular classroom if possible. When placement of a disabled child creates legitimate controversy, the *Oberti* approach provides courts with a useful structure for placing the child in the least restrictive environment.

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73. See *supra* notes 2-4 and accompanying text for a discussion of the mainstreaming requirement under the IDEA.

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