

Methods of Deletion

Testing Displacement, State Accountability Design, and the Civil Rights of Students in Segregated Classrooms

In a growing number of self-contained special education classrooms, the schedule lists two subjects. Reading and mathematics are taught; science, history, and civics are not offered at all. 7.5 million students are served under IDEA, and for those who spend the day outside general classes, the deleted subjects are deleted from their education.

INTRODUCTION

Walk the corridor. Read the master schedule posted outside each room.

In the general education rooms: reading, mathematics, science, social studies, the rest of the familiar catalogue.

In the self-contained special education room down the same corridor: two subjects. Reading and mathematics fill the instructional day. Science does not appear. History does not appear. Civics does not appear.

THREE CLAIMS

- 1. The schedule is designed, the predictable output of federal and state accountability architecture
- 2. The schedule is discriminatory, a method of administration that denies meaningful access to the state's general curriculum
- 3. The schedule is litigable as a class, the injury is uniform in a way that almost nothing else in special education is

PART I

The Architecture of Displacement

What the statute counts · What the incentive does · The proof problem

The statute names the full catalogue as the entitlement of all students.

ESSA defines a "well-rounded education" as courses in English, reading, writing, science, technology, engineering, mathematics, foreign languages, civics and government, economics, arts, history, and geography, for all students. 20 U.S.C. § 7801(52).

Then it constructs a consequence engine that runs on two subjects.

WHAT THE STATUTE COUNTS

Annual assessments in mathematics and reading or language arts, grades 3–8 and once in high school. Science once per grade span. 20 U.S.C. § 6311(b)(2)(B)(v).

WHAT THE INCENTIVE DOES

62% of districts reported increasing time in ELA or mathematics. 44% reported cutting science, social studies, art, music, PE. McMurrer, Ctr. on Educ. Pol'y (2007). The primary effect of high-stakes testing: narrowing to tested subjects. Au, 36 Educ. Researcher 258 (2007).

The incentive concentrates in the programs whose institutional standing depends most heavily on the counted scores. The deletion is nobody's stated choice. It is the design operating.

7.5M

children ages 3–21 served under IDEA, 15% of public school enrollment

1M+

children (13%) spending less than 40% of the school day in general classes

21%

of students with intellectual disabilities spend most of the day in general classes, for them, the two-subject schedule is the only schedule

For the student who spends the bulk of the day outside general classes, the general education science block across the hall is not his science block. If his room's schedule omits the subject, the subject is omitted from his education.

PART II

Three Axes, One Unoccupied

Placement · Services · Curriculum Content

II

AXIS 1, PLACEMENT

Where does the student sit?

Least restrictive environment mandate. Olmstead integration mandate. Moves students between rooms. Does not obligate anyone to teach anything.

Cannot reach the injury: a student transferred to a general classroom without supports has not had his curriculum restored.

AXIS 2, SERVICES

What individualized services does the student receive?

IDEA FAPE guarantee. One child, one due process hearing, revision of one IEP.

Cannot reach a buildingwide deletion: an individualized process cannot supply a subject that does not exist in the building for any team to individualize.

AXIS 3, CURRICULUM CONTENT

What subjects exist in the room at all?

Holds placement constant. Holds service mix constant. Comparator is exact and local: general education students in the same building receive the full catalogue.

As a theory of liability, unoccupied. This Article builds the claim that occupies it.

PART III

The Claim

Methods of administration · Alexander v. Choate · Meaningful access

III

28 C.F.R. § 35.130(B)(3) · 34 C.F.R. § 104.4(B)(4) · ALEXANDER V. CHOATE, 469 U.S. 287 (1985)

A public entity may not utilize criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination.

The accountability system is a method of administering the state's education program. It is the instrument by which the state allocates attention, consequence, and institutional survival across its schools.

The theory requires no allegation that any official intended the deletion. The regulation is written in the language of effects.

THE CHOATE GUARANTEE

"The benefit itself cannot be defined in a way that effectively denies otherwise qualified individuals the meaningful access to which they are entitled.", Alexander v. Choate, 469 U.S. 287, 301 (1985)

Meaningful access to a curriculum is not satisfied by physical presence in a building where the curriculum is taught to others. A student for whom the subject does not exist on any schedule he can attend has no access to it at all.

BACON V. CITY OF RICHMOND, 475 F.3D 633 (4TH CIR. 2007) · Y.A. V. HAMTRAMCK PUB. SCHS., 137 F.4TH 862 (6TH CIR. 2025)

The pleading rule: plead the state's own conduct. Never plead that the state is liable because it funds, oversees, or failed to correct the district.

This discipline costs the claim nothing. The conduct at the root of the deletion is the state's own. The state designs the assessment system, selects which subjects are tested, constructs the accountability indicators, sets the weights, identifies the schools, and administers the consequences.

None of that is supervision of somebody else's program. It is the state operating an instrument the federal statute requires the state itself to build and run. 20 U.S.C. § 6311(c)(1).

STATE DEFENDANTS

Liabale for designing and operating the accountability method

DISTRICT DEFENDANTS

Liabale for adopting and maintaining the two-subject schedule, their own method at the local layer

Each entity answers for its own method. Milliken v. Bradley, 433 U.S. 267 (1977).

SECTION VI · MONAHAN V. NEBRASKA, 687 F.2D 1164 (8TH CIR. 1982)

THE OVERLAY

In the education context, many courts require more than a statutory violation: bad faith or gross misjudgment by the educators. It is the one domain where an extra mental-state element is grafted onto Section 504 and Title II.

WHY IT DOES NOT REACH A SCHEDULE

The overlay protects judgments, and a categorical deletion is not a judgment. It is the absence of one. Injunctive relief does not require intent in any event, and if intent were required, the comparator, the full catalogue delivered down the hall, supplies it.

The individualization defense collapses before it reaches the claim.

The state argues: every child's IEP is different. No common contention can exist across the class.

The inversion: no IEP team can individualize access to a subject that does not exist in the building. The deletion precedes every individualized choice.

THE DUKES SHOWING

The common contention sits upstream of individualization. Its resolution in one proceeding will resolve the claim for every member of the class. A subject's absence from a building operates identically on every child in the room.

THE SINGLE INJUNCTION

The state shall schedule and deliver the deleted subjects in the rooms that exist. Every child in the building benefits from the same order. No individualized determination needed.

No hearing officer can grant the relief, so no hearing has to be exhausted first.

The gravamen is a categorical deletion measured against the program delivered to nondisabled students, a comparison no due process hearing is built to adjudicate. The relief, a structural injunction against the state's method of administration, is relief no IDEA hearing officer can grant.

After Luna Perez, a plaintiff seeking relief the IDEA cannot provide need not run the IDEA's administrative gauntlet to reach the disability statutes. 20 U.S.C. § 1415(l).

FRY V. NAPOLEON COMMUNITY SCHOOLS, 580 U.S. 154 (2017) · LUNA PEREZ V. STURGIS PUBLIC SCHOOLS, 598 U.S. 142 (2023) · EX PARTE YOUNG, 209 U.S. 123 (1908)

IDEA Exhaustion

The gravamen of this claim is a categorical deletion measured against the program delivered to nondisabled students, a comparison no due process hearing is built to adjudicate.

The relief sought, a structural injunction against a state's method of administration, is relief no IDEA hearing officer can grant. 20 U.S.C. § 1415(l); Luna Perez, 598 U.S. 142.

Sovereign Immunity

Ex parte Young

Prospective injunctive relief against state officials in official capacities. Eleventh Amendment no bar.

Section 504 waiver

Every state accepting federal education funds waives immunity. 42 U.S.C. § 2000d-7(a)(1). Every state does.

Title II abrogation

United States v. Georgia, 546 U.S. 151 (2006); Tennessee v. Lane, 541 U.S. 509 (2004). Three doors open; claim needs only two.

Three doors open. The claim needs only two.

EX PARTE YOUNG

Prospective injunctive relief against state officials in their official capacities. The Eleventh Amendment is no bar to the forward-looking order this claim seeks.

§ 504 FUNDING WAIVER

42 U.S.C. § 2000d-7: a state that accepts federal education funds waives immunity. Every state does.

TITLE II ABROGATION

Valid as applied under United States v. Georgia and Tennessee v. Lane, where the conduct independently violates the Fourteenth Amendment.

"The defendant entities shall schedule and deliver instruction in the deleted subjects, aligned to the state's content standards, in the settings where students are currently placed."

DOES NOT ORDER

Any placement change. Any service level or staffing model. Any appropriation.

COMPLIANCE MEASURED BY

Master schedule and instructional minutes, documents defendants already produce in the ordinary course.

FEASIBILITY CONCEDED BY

The defendants' own published alternate academic achievement standards, a formal determination that these subjects are teachable to this population.

CONCLUSION

A subject's absence from a child's education is not a fact of nature. Somebody designed it. The design has an author, the author is a public entity, and the statutes have always reached what public entities do by design.

The two-subject schedule survived because each body of law that might have noticed it was aimed at a different axis. This Article holds the axes apart and occupies the third.

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