

1-1-2015

## Interview With: Miranda Johnson, Associate Director of the Education Law and Policy Institute, Loyola University Chicago School of Law

Jenessy Rodriguez

Follow this and additional works at: <http://lawcommons.luc.edu/clrj>

 Part of the [Juvenile Law Commons](#)

---

### Recommended Citation

Jenessy Rodriguez, *Interview With: Miranda Johnson, Associate Director of the Education Law and Policy Institute, Loyola University Chicago School of Law*, 35 CHILD. LEGAL RTS. J. 261 (2015).  
Available at: <http://lawcommons.luc.edu/clrj/vol35/iss3/9>

This Featured Practice Perspectives is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Children's Legal Rights Journal by an authorized administrator of LAW eCommons. For more information, please contact [law-library@luc.edu](mailto:law-library@luc.edu).

***Interview With:***  
**Miranda Johnson, Associate Director of the Education Law and Policy  
Institute, Loyola University Chicago School of Law**

*By Jenessy Rodriguez*

Miranda Johnson serves as the Associate Director of the Education Law and Policy Institute at Loyola University Chicago School of Law. She supports the development of an effective course curriculum, plans new research, and expands outreach opportunities in educational advocacy. She teaches several courses in education law at Loyola and also supervises law students in school discipline and special education cases. She has worked for various organizations such as Advocates for Children of New York (“AFC”), where she represented parents of students with disabilities and advocated for appropriate educational services. Miranda also collaborated with students at Loyola in developing a suspension advocacy group called Stand Up For Each Other, Chicago! (“SUFCO”), which aids parents and students in suspension appeals and in fostering better communication with school administration.

**Q: What do you think about school districts that assert restrictiveness as a defense to claims for private school tuition?**

I understand that school districts are seeking to defend against claims for rather significant amounts of tuition reimbursement and are looking for any argument that might be acceptable to courts. I also think that there may be some language that supports the position that looking at whether the parent’s selected placement satisfies the goals of the least restrictive environment (“LRE”) is appropriate as one of the factors to consider. For example, if the parent was evaluating two different types of private school placements, then restrictiveness would be an appropriate consideration. While I do not think that it is the strongest defense, I understand why school districts may rely on it. However, I would be concerned if that was their sole defense.

**Q: Do you think that the implication is that those districts are motivated more by financial interests rather than morality or altruism?**

While I think that the implication is likely true, it is also true that school districts have a responsibility to educate all the children in their district and need to be careful about expenditure of resources. The unfortunate reality of most of these cases involving private school placement is that if the district fulfilled their responsibility to provide a free and appropriate public education (“FAPE”) to all students in their districts, then parents could never even win these cases. The fundamental basis of all these cases is that, in order to provide reimbursement to parents of students with disabilities, the district must have failed to provide FAPE. What saddens me is that these kinds of disputes over a parent’s private school placement need to be litigated when the district could have and should

have provided a FAPE to begin with. If districts paid less attention to litigation over parent's private school placements and instead focused their resources and attention on the quality of services in the public schools, then there would be a lot of good that would result.

**Q: Are there other remedies besides litigation, such as mediation?**

Yes, the Illinois State Board of Education ("ISBE") does offer mediation as an option in these kinds of disputes. Also, the Individuals with Disabilities Education Act ("IDEA") requires that when you file for due process there is a 30thirty-day resolution period, which is essentially an opportunity to resolve disputes like this through mediation. However, the types of disputes that are harder to resolve occur when the parent has become so frustrated with the public school system and may have tried to make the system work for their child for many years. These parents have become skeptical of the school district's contention that it can meet their child's needs.

**Q: In situations where a parent seeks reimbursement for private school tuition reimbursement, should public school authorities be permitted to challenge the private placement on the sole ground of restrictiveness?**

I do not think that school districts should be permitted to challenge the private school placement on the sole ground of restrictiveness. If you are looking at a private school day placement, there are not many private placements that offer special education services while also offering mainstreaming opportunities with general education peers. If hearing officers and courts were to reject a parent's placement solely on the ground that it was too restrictive, that would effectively hamstring parents in accessing a remedy that the Supreme Court has made available to them when school districts fail to offer FAPE. The burden on parents to identify and find an appropriate private school placement that would accept their child is already difficult. Therefore, to add the additional requirement that the private school day placement must also have mainstreaming opportunities is counterproductive.

**Q: Are parents offered any guidance in searching for an appropriate private school placement?**

Often, what I see is parents are trying to navigate the special education system on their own. Parents may have the support of a private evaluator or an attorney, and it is usually these families who are the ones able to identify an appropriate private school placement. For low-income families, there are significant obstacles to taking advantage of the remedy of unilateral private school placement. A low-income parent cannot simply decide that she is not going to accept the school district's placement and will instead place her child in a private placement and pay tuition while due process proceedings are pending. Special education services at a private school are enormously expensive. Some circuits have accepted the remedy of direct payment to the private school as a prospective

remedy for the denial of FAPE. This means that the parent could place the child at a private school that specializes in special education and seek an order by a hearing officer to directly pay tuition rather than having the tuition reimbursed to the parents. However, this is not a widely accepted practice in all circuits, and even if it were, it would still usually mean that a low-income parent would need to wait on a due process decision before she could go forward with the placement. Therefore, the court decisions regarding unilateral placement usually involve wealthier families who can afford to take the risk of withdrawing the child from the special education placement and placing the child in a private school at their own expense. However, this is a very limited set of families. Unfortunately, many parents of various income backgrounds do not know the options available to them. It is a confusing process for any parent to navigate.

**Q: What do you think about applying the “least restrictive environment” standard when parents are seeking inclusion, but not considering it in evaluating unilateral placements in tuition reimbursement cases?**

I think that the LRE standard was really put into place to guard against districts warehousing students in segregated special education placements when that was not really necessary. I think that it is a very appropriate standard to think about when looking at a district’s placement. Do we really need to place this child in a self-contained class with only other students with disabilities when actually the student could succeed in general education if given sufficient supports and services? So I think that is why the LRE standard is an important consideration and certainly a motivating factor of the IDEA. There were too many children with disabilities being inappropriately warehoused in classrooms in placements that were not meeting their needs. However, we cannot forget that one of the primary motivating factors of the IDEA is that these placements were not meeting the child’s needs. There needed to be a remedy for parents that allows them to secure in a timely manner an appropriate placement that will meet the child’s needs. A child’s education is not something you can litigate for a long time without impacting the child. I do not think that the same standards that you hold school district accountable to should be applied to a parent’s placement. The school should have a whole continuum of options and a menu of potential placements for the students in their districts, and parents cannot be held to that same standard.

**Q: Do you believe that there is some legitimacy in sacrificing educational benefit for the greater social benefit of being surrounded by mainstream peers?**

I think that the primary focus should always be whether or not we are meeting the child’s individual educational needs. If a student is not reading, then that student should be provided with research-based instruction that will meet the student’s needs. If the child has emotional disabilities, then he or she should be provided with support and services that meet his or her individualized needs. There should be recognition that the needs of a student with anxiety may be different from a student with emotional disabilities that are more aggressive or involve externalizing behaviors and likewise for students who have

other types of disabilities or classifications. If the instruction that meets the child's individual needs can be provided within a context that allows them to access the types of extracurricular and social opportunities that are available to all students or students in general education environment, that is ideal. But I get concerned when the LRE mandate is focused on at the expense of the research-based instruction that meets the student's needs.

**Q: If the IDEA seeks to emphasize a more qualitative agenda, can a presumption for integration serve this purpose?**

In placing students, the school districts should evaluate whether the school's overall environment is a good fit for the student and whether various aspects of the school environment are meeting the student's needs. An emphasis on enhancing social interactions with peers is not often sufficiently considered in the development of an Individualized Educational Plan ("IEP"). I think that addressing internalizing and externalizing behaviors offer opportunities to teach healthy ways to handle anger, conflict, and frustration. All too often, externalizing behaviors are met with punitive discipline rather than addressed constructively. I think that the problem is that these needs cannot be adequately addressed in an individual IEP alone. There needs to be a school-wide and district-wide commitment to a positive school climate. One of main recommendations of U.S. Department of Education in their discipline guidance package last January is that schools should be focusing on developing a positive school climate. If schools start with their overall climate issue, then building and structuring supports and interventions into IEPs for particular students with behavior-related needs will help. However, if the school climate is promoting bullying and micro-aggressions and teachers are not available or unsupportive, then building these aspects into an IEP will often not be that helpful. The environment may be the LRE for the student but it may not meet the student's needs due to the nature of the school. Therefore, those parents may consider placing their child in a private environment that is smaller and more likely to keep that student engaged and feeling that the school is really concerned about meeting their needs.

**Sources:**

Interview with Miranda Johnson, Assoc. Dir. of the Educ. Law and Policy Inst., Loyola Univ. Chi. Sch. of Law, in Chi., Ill. (Apr. 1, 2015).