

## MEASURING PROGRESS

### Overview

The measurement of progress is essential to determining whether a student with a disability is receiving an educational benefit from the district in accordance with the public agency's obligations to provide FAPE. See [34 CFR 300.320](#) (a)(3). As a result, the IDEA enumerates a number of IEP requirements for measuring student progress.

### Key Points

These key-point summaries cannot reflect every fact or point of law contained within a source document. For the full text, follow the link to the cited source.

### MEASURING PROGRESS -- IEP GOALS

- The IDEA requires that every IEP include a statement of measurable annual goals, including academic and functional goals, designed to:
  - o Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability.
  - o For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives. [34 CFR 300.320](#) (a)(2).
- The IDEA at [34 CFR 300.320](#) (a)(3) requires that every IEP include a description of:
  - How the child's progress toward meeting the annual goals will be measured, and
  - When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.
- The purpose of IEP goals is to allow the IEP team, the parents, and the district to measure a student's progress in a specific area of need. *Los Angeles Unified Sch. Dist.*, [110 LRP 34448](#) (SEA CA 06/03/10).
- Because the evaluation of a student's progress is so closely tied to the student's IEP goals, the district must ensure that the goals included in each student's IEP are clear and objectively measurable. *Kuszewski v. Chippewa Valley Schs.*, [34 IDELR 59](#) (E.D. Mich. 2001), *aff'd*, [38 IDELR 63](#) (6th Cir. 2003, *unpublished*) (holding that measurable goals must have "sufficiently objective criteria" for measuring progress). One administrative law judge has suggested that a well-written IEP goal should pass the "stranger test." Under that test, an IEP goal is appropriate if a person unfamiliar with the IEP would be able to implement the goal, implement the assessment of the student's progress on the goal, and determine whether the student's progress was satisfactory. *Mason City Cmty. Sch. Dist.*, [46 IDELR 148](#) (SEA IA 2006).
- The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. *Bridges v. Spartanburg County Sch. Dist. Two*, [57 IDELR 128](#) (D.S.C. 2011) (the use of percentages tied to the completion of discrete tasks is an appropriate way to measure student progress).
- A finding that a child's goals are vague or immeasurable generally leads to a ruling that the district denied FAPE. See, e.g., *Independent Sch. Dist. No. 701 v. J.T.*, [45 IDELR 92](#) (D. Minn. 2006) (an IEP's statement that a student would "improve his functional academic skills from a level of not completing assignments independently to a level of being able to read, write and do basic math skills independently" was too vague to permit measurement of the student's progress); and *Anchorage Sch. Dist.*, [51 IDELR 230](#) (SEA AK 2008), *aff'd*, [54 IDELR 29](#) (D. Alaska 2009) (finding by IHO that the lack of clear, measurable goals in a child's IEP precluded an objective measurement of the child's progress).
- In *A.M. v. New York City Department of Education*, [61 IDELR 214](#) (S.D.N.Y. 2013), the IEP team's failure to include the number of times that the student needed to perform certain tasks correctly when solving math problems did not make the student's goals immeasurable.

The District Court found that while the math goals did not include target achievement levels, the goals did specifically identify tasks needed to demonstrate progress. Because the math goals identified the specific tasks the student needed to perform, the court held that the IEP's failure to include a specific measurement standard was not sufficiently serious to amount to a denial of FAPE.

### **GOOD GRADES IN GENERAL CURRICULUM AS AN INDICATOR OF FAPE**

- While good grades can be evidence of compliance with the IDEA's FAPE mandate, they do not, as a matter of law, end an inquiry into whether a district provided FAPE. In fact, the IDEA expressly cautions that: "Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade." [34 CFR 300.101](#) (c)(1).
- When a student with a disability is participating in the general curriculum, good report card grades suggest that the student has made progress and such progress, in turn, strongly suggests that the student has received FAPE. See *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, [553 IDELR 656](#) (U.S. 1982).
- The 3d Circuit in *D.S. and A.S. v. Bayonne Board of Education*, [54 IDELR 141](#) (3d Cir. 2010), reversed a decision reported at [51 IDELR 189](#) that the student's good grades established a receipt of FAPE. The decision turned in part on the Supreme Court's decision in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, [553 IDELR 656](#) (U.S. 1982). In *Rowley*, the Supreme Court held that a student's ability to earn passing marks and advance from grade to grade is a strong indicator that he received a meaningful educational benefit. However, the 3d Circuit pointed out that *Rowley* addressed a student's performance in the general education classroom. "Our reading of *Rowley* leads us to believe that when ... high grades are achieved in classes with only special education students set apart from the regular classes of a public school system, the grades are of less significance than grades obtained in regular classrooms."
- A number of courts and hearing officers have held that passing grades indicate a student's receipt of FAPE. See *Falzett v. Pocono Mountain Sch. Dist.*, [44 IDELR 121](#) (3d Cir. 2005, unpublished) (holding that a student's A average and above-average scores on the Secondary School Admission Test showed that his district offered FAPE); and *Viola v. Arlington Cent. Sch. Dist.*, [45 IDELR 39](#) (S.D.N.Y. 2006) (the student was approaching grade level in all areas, made progress on achieving legibility with his handwriting, and had made steady progress in phonological awareness and auditory recall).

### **FAILING GRADES IN GENERAL CURRICULUM AS AN INDICATOR OF FAPE**

- Just as passing grades do not always establish the provision of FAPE, failing grades do not always spell trouble for a district. The amount of appropriate regular education progress, in terms of passing grades and grade-to-grade advancement, necessarily depends upon the abilities of each individual student with a disability. *Carter v. Florence County Sch. Dist. Four*, [18 IDELR 350](#) (4th Cir. 1991), *aff'd*, [20 IDELR 532](#) (U.S. 1993). See *Conklin v. Anne Arundel County Bd. of Educ.*, [18 IDELR 197](#) (4th Cir. 1991) (recognizing that some children, due to the extent of their disabilities, will never be able to perform at grade level and will require several years to achieve what would be to a nondisabled child a year's worth of progress); and *L.F. v. Houston Indep. Sch. Dist.*, [58 IDELR 63](#) (5th Cir. 2012, unpublished), *cert. denied*, [112 LRP 48381](#), 133 S. Ct. 248 (2012) ("although [the student] consistently performed at least one grade level below her peers, the IEP listed goals, specific objectives, and evaluation methods required [for her] to improve").

### **STAGNANT PERFORMANCE**

- If a student fails to make progress within a reasonable period of time, the district must convene an IEP meeting to address the student's lack of progress. [34 CFR 300.324](#) (b)(ii) (A). A district's continuation of inadequate services will almost certainly be regarded as a denial of FAPE. See, e.g., *District of Columbia Pub. Schs.*, [49 IDELR 267](#) (D.D.C. 2008) (noting that a student's present levels of performance remained stagnant for several years); *Unionville-Chadds Ford Sch. Dist.*, [47 IDELR 280](#) (SEA PA 2007) (finding that a district should have addressed a child's reading deficiencies when it became apparent that the student was not making any progress); and *Department of Educ., State of Hawaii*, [47](#)

[IDELR 238](#) (SEA HI 2007) (criticizing the ED's decision to continue an ineffective reading program despite the student's lack of progress over a three-year period).

### **SHORT-TERM OBJECTIVES**

- While no longer a requirement under the IDEA, except for those students who take alternate assessments aligned to alternate achievement standards, the inclusion of short-term objectives can be useful. [34 CFR 300.320](#) (a)(2)(ii). Short-term objectives are a derivative of annual goals, and typically provide more detailed information regarding measurement of student progress. In some instances, these short-term objectives have saved an otherwise deficient annual goal. *R.R. and D.R. v. Scarsdale Union Free Sch. Dist.*, [52 IDELR 185](#) (S.D.N.Y. 2009), *aff'd*, [54 IDELR 2](#) (2d Cir. 2010, *unpublished*); and *In re: Student with a Disability*, [58 IDELR 25](#) (SEA NY 2011).
- **PRESENT LEVELS OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE**
- An essential part of measuring a student's progress is a properly drafted statement of the student's present level of academic achievement and functional performance. This statement helps establish a baseline, or starting point, for measuring the student's progress. Much like IEP goals, the IEP should express this statement in objectively measurable terms. *See O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233*, [28 IDELR 177](#) (10th Cir. 1998); and *Chase v. Mesa County Valley Sch. Dist. No. 51*, [53 IDELR 72](#) (D. Colo. 2009).