



**Collecting Legally Defensible  
Data, Virtually**

Utah Institute on Special Education Law

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**Agenda**

- ◆ Requirement to Collect Data during Virtual Instruction
  - ◆ FAPE Requirements under *Rowley* and *Andrew F.*
  - ◆ Evaluation Requirements under the IDEA
  - ◆ Analyzing the Case Law
- ◆ Tips for Collecting Legally Defensible Data
  - ◆ Analyzing the Data: Best Practices
  - ◆ Overcoming the Challenges of Collecting Data in a Virtual Setting

*Disclaimer: The information in this handout and presentation is for the purpose of providing general information and is not intended to provide legal advice or substitute for the legal advice of counsel.*

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**Requirement to Collect Data  
during Virtual Instruction**



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FAPE Requirements under  
*Rowley and Endrew F.*




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Overview of the IDEA

- ◆ Individuals with Disabilities Education Act (20 USC 1400 *et seq.*)
  - ◆ Ensures access to public education for all students with disabilities. (*Timothy W. v. Rochester Sch. Dist.*, 441 IDELR 393 (1st Cir. 1989) (“zero reject” rule)).
  - ◆ Provides federal funding to states for students with disabilities.
  - ◆ Requires states to provide *eligible* students with disabilities a free appropriate public education (FAPE) in the least restrictive environment (LRE).

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Free Appropriate Public  
Education

- ◆ What is a free appropriate public education (FAPE)?
  - ◆ *Rowley Standard*: For a student who is fully integrated into the regular education setting, the student’s IEP should be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982).
  - ◆ *Endrew F. Standard*: For a student who is not fully integrated into the regular education setting, the student’s IEP should be “appropriately ambitious” and give the student a “chance to meet challenging objectives” – goals must be “appropriately ambitious in light of [the child’s] circumstances.” *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017).

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## FAPE Under Endrew F.

- ◆ **Endrew F. v. Douglas County Sch. Dist. RE-1, 69 IDELR 174, 137 S.Ct. 988 (2017).**
  - ◆ A school must offer an IEP that is reasonably calculated to enable a child to **make progress** “appropriate in light of the child’s circumstances.”
  - ◆ When a child is “fully integrated” into a regular classroom, providing FAPE that meets the unique needs of a child with a disability typically means providing a level of instruction reasonably calculated to **permit advancement through the general curriculum (Rowley Standard)**
  - ◆ If progressing smoothly through the general curriculum is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement but must be “appropriately ambitious in light of his circumstances.”
  - ◆ This standard is markedly more demanding than a ‘merely more than de minimis’ test for educational benefit.

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## What Is Progress That Is “Appropriate to the Child’s Circumstances?”

- ◆ The degree of progress contemplated by the IEP must be ‘appropriate in light of the child’s circumstances.’
- ◆ **ISSUE:** What does “appropriate in light of the child’s circumstances” mean?
  - ◆ Potential?
  - ◆ PLEP/PLOP Measures?
  - ◆ IQ/Achievement/Other Academic Testing?
  - ◆ Social/Emotional Deficits?
  - ◆ Medical Conditions?
  - ◆ Disability Category?
  - ◆ Other???

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## The New FAPE Standard is “More Demanding” that “Merely De Minimis”

- ◆ “This standard is more demanding than the “merely more than de minimis” test applied by the Tenth Circuit. It cannot be right that the IDEA generally contemplates grade-level advancement for children with disabilities who are fully integrated in the regular classroom but is satisfied with barely more than de minimis progress for children who are not.” *Endrew F. v. Douglas County Sch. Dist. RE-1, 69 IDELR 174, 137 S.Ct. 988 (2017).*
- ◆ Thus, students in special education classrooms must make more than “de minimis” educational progress.

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## FAPE after *Andrew F.*

- ◆ Tenth Circuit- After *Andrew F.*
- ◆ In 2019, the 10th Circuit acknowledged that lower courts were correctly applying the substantive standard governing FAPEs as articulated in *Andrew F.*, which requires Student's IEP to be "reasonably calculated to enable Student to make progress appropriate in light of his circumstances." *Nathan M. by & through Amanda M. v. Harrison Sch. Dist. No. 2*, 942 F.3d 1034, 1038-39 (10th Cir. 2019).
- ◆ Then in 2020, the Circuit Court confirmed the *Andrew F.* standard when a parent alleged that a School District's ABA strategies would be ineffective because they would be applying "a simple strategy or handful of techniques," rather than "specialized training and continuous implementation with fidelity."
  - ◆ Here, the Court held that even if "the School District is not perfectly administering ABA, we do not evaluate whether the IEP perfectly adheres to a particular methodology. Rather, we ask whether the IEP is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."
  - ◆ *Elizabeth B. by & through Donald B. v. El Paso Cty. Sch. Dist.* 11, 841 F. App'x 40, 44 (10th Cir. 2020).

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## What are the Child's Circumstances?

- ◆ **Jack J. v. Coatesville Area Sch. Dist., No. 17-cv-3793, 2017 WL 3397552 (E.D. Penn. July 12, 2018).**
- ◆ In discussing the individual circumstances of the student, the Court considered the student's intellectual potential, his proven academic successes, and his ADHD-related weaknesses to determine whether there was progress appropriate for FAPE when:
  - ◆ Jack had mixed progress on IEP goals (progress on some and regression or inconsistent progress on others).
  - ◆ District continued to amend IEPs to account for new assessment data and increased services as needed
- ◆ Collective progress (i.g., grades and IEP progress reports) indicated that Jack's IEP was reasonably calculated to allow him to make meaningful progress.

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## What are the Child's Circumstances?

- ◆ **R.N. and A.N. ex rel. R.N. v. Board of Educ. for the Iroquois Cent. Sch. Dist., 119 LRP 20443 (W.D.N.Y. May 20, 2019).**
- ◆ Because the student made trivial progress at best under the district's prior IEP, the district denied the student FAPE when offered essentially the same IEP and the district was on the hook for the parent's private school for students with SLD.
- ◆ The Court reasoned that the student's progress under a prior IEP is a relevant inquiry in determining whether the proposed IEP offers FAPE.
- ◆ The student was reading 3-4 grade levels behind and continued to struggle in math.
- ◆ The proposed IEP did not provide additional specialized math instruction, contained minimal changes, and failed to address the student's significant anxiety and school refusal.

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## What are the Child's Circumstances?

- ◆ **Johnson v. Boston Pub. Schs., 73 IDELR 31 (1<sup>st</sup> Cir. Oct. 12, 2018).**
  - ◆ The 1<sup>st</sup> Circuit explained that "slow progress" does not necessary mean that the student did not receive meaningful benefit.
    - ◆ "Instead, the relationship between speed of advancement and the educational benefit must be viewed in light of a child's individual circumstances."
  - ◆ The 1<sup>st</sup> Circuit held that its "meaningful educational benefit" standard did not conflict with *Andrew F.*'s requirement that an IEP be reasonably calculated to enable a child to make progress in light of his circumstances.
  - ◆ In this case, considered the following individual circumstances:
    - ◆ The child had a hearing impairment.
    - ◆ The child had gone from "substantial inability to communicate or understand spoken or signed language to gradually signing, vocalizing, and demonstrating comprehension of other linguistic concepts."
    - ◆ The parent was resistant to the educational program.
  - ◆ Based on the child's individual circumstances, the slow linguistic progress was enough to show meaningful progress for FAPE.

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## What are the Child's Circumstances?

- ◆ **C.B. v. Smith, 119 LRP 26315 (D.Md. July 9, 2019).**
  - ◆ The Court considered the following individual circumstances:
    - ◆ The student's educational progress (e.g., read above grade level, oral and written language skills on grade level with accommodations, met all IEP goals) in 4<sup>th</sup> grade .
    - ◆ The fact that the student had anxiety in 4<sup>th</sup> grade regarding certain assignments.
    - ◆ when considering the 5<sup>th</sup> and 6<sup>th</sup> grade IEPs.
  - ◆ Considering his individual circumstances, the proposed 5<sup>th</sup> and 6<sup>th</sup> grade IEPs addressed the student's anxiety in a manner that was reasonably calculated to allow him to receive an appropriate educational benefit.
    - ◆ The proposed fifth-grade IEP included 40 minutes of counseling services each month.
    - ◆ The sixth-grade IEP -- developed for the student's first year of middle school -- similarly included 20 minutes of counseling services each month.
    - ◆ "The IEPs also provided visual cues to [the student] to redirect him without making him feel singled out; visual organizers and daily schedules to help [his] anxiety about what steps come next; breaks to allow [him] to decompress and reset; must-do's and may-do's to help [his] anxiety about the amount of homework that he has; and a menu of coping strategies for his anxiety."
  - ◆ The court upheld an administrative law judge's finding that the district offered the student FAPE.

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## U.S. Dept. of Ed Guidance on *Andrew F.*

- ◆ On December 7, 2017, U.S. Dept. of Ed. issued guidance on the *Andrew F.* decision.
  - ◆ "Reasonably Calculated" means: "Generally, this means that school personnel will make decisions that are informed by their own expertise, the progress of the child, the child's potential for growth, and the views of the child's parents."
    - ◆ "In determining whether an IEP is reasonably calculated to enable a child to make progress, the IEP team should consider the child's previous rate of academic growth, whether the child is on track to achieve or exceed grade-level proficiency, any behaviors interfering with the child's progress, and additional information and input provided by the child's parents."

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## Reasonably Calculated Means Prospective Judgment

### ◆ Jack J. v. Coatesville Area Sch. Dist., 118 LRP 29498 (E.D. Penn. July 12, 2018).

- ◆ The Court pointed out that *Andrew F.* stressed that “reasonably calculated” means that school officials must use prospective judgment when developing an IEP.
- ◆ Thus, evidence acquired after the development of the IEP (e.g., the student’s progress under the IEP) can only be used to help evaluate the reasonableness of the IEP at the time it was developed.

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## U.S. Dept. of Ed Guidance on *Andrew F., cont.*

- ◆ Cont.,
- ◆ “Progress appropriate in light of the child’s circumstances” means: individualized decision to write an IEP with goals that aim to enable the child to make progress, giving ‘careful consideration to the child’s present levels of achievement, disability, and potential for growth.’”
- ◆ “Every child has chance to meet challenging objectives” means: offering an IEP designed to provide access to instructional strategies and curricula aligned to both challenging State academic content standards and ambitious goals to address academic and functional performance.
- ◆ “Annual goals are appropriately ambitious” means: advancement from grade to grade for most children in the regular classroom and offering an IEP that is designed to enable the child to be involved in, and make progress in, the general education curriculum (same curriculum as non-disabled children based on State academic content standards).

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## U.S. Dept. of Ed Guidance on *Andrew F., cont.*

- ◆ Cont.,
- ◆ States the following regarding FAPE for students with the most severe cognitive disabilities:
  - ◆ IEP goals should be appropriately ambitious, based on the State’s content standards.
  - ◆ The IEP should be revised if the expected progress is not occurring.
  - ◆ If the child is not making expected progress, the IEP team must meet to review and revise the IEP if needed.

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Evaluation Requirements  
under the IDEA




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Addressing Areas of Suspected  
Disability & Need

- ◆ Under the IDEA, a district has an obligation to evaluate a student in all areas related to the suspected disability, including if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communication status, and motor abilities.
- ◆ The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. 34 C.F.R. 300.304(c)(4, 6).

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Progress Towards IEP Goals

- ◆ The IDEA focuses on the child's progress on IEP goals to enable the child to make progress in the general education curriculum.
- ◆ "A statement of measurable annual goals, including academic and functional goals designed to 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...."
- ◆ "A description of how the child's progress towards meeting annual goals...will be measured and when periodic reports on the progress the child is making towards meeting the annual goals (such as through use of quarterly or other periodic reports, concurrent with the issuance of report cards, will be provided." 34 C.F.R. § 300.320 (a)(2)(A) & (a)(3).

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## Evaluating Areas of Need

- ◆ Assessment data (whether initial, reevaluation, or ongoing progress monitoring data collection) is the foundation of the IEP.
- ◆ Assessment data over time is necessary for determining whether a student received FAPE during the COVID-19 pandemic.
  - ◆ The U.S. Dept. of Ed.'s guidance for determining the need for compensatory education services (was denied FAPE) is based on the student's growth during the period of school closure as measured by the student's PLOP after schools resume normal operations. *See* U.S. Dept. of Ed., Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities, Mar. 21, 2020.

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## Review of Progress Monitoring Data

- ◆ The IDEA requires the IEP team to meet "periodically" but "not less than annually" to "determine whether the annual goals for the child are being achieved."
- ◆ The IDEA further requires the IEP team to revise the IEP as needed to address "any lack of expected progress toward the annual goals...and in the general education curriculum." 34 C.F.R. § 300.324 (b)(1)(i) & (b)(1)(ii).

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## Analyzing the Case Law




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### Court looks to More than Standardized Assessments to Determine FAPE

- ◆ **S.M. v. District of Columbia, 120 LRP 38714 (D.D.C. Dec. 8, 2020).**
  - ◆ Parents argued that the IEP developed by the district did not provide sufficient special education services for S.M., which denied her a FAPE.
  - ◆ The Court upheld the hearing officer's decision that the district offered S.M. a FAPE finding it was reasonable for the hearing officer to conclude that the IEP progress reports and testimony regarding progress outweighed S.M.'s limited progress on the standardized tests, due to the limited data available at the time.

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### Progress Reports to Parents Establish FAPE

- ◆ **Oskowis v. Sedona-Oak Creed Unified School District #9, 73 IDELR 226 (D.Ariz. February 19, 2019).**
  - ◆ Parents alleged violation of FAPE by failing to appropriately monitor and report progress.
  - ◆ School had provided progress reports as set out in the IEP and parents acknowledged they had received the reports, discrediting the parent's arguments.
  - ◆ The Judge held that the IEP team was not required to meet earlier to address alleged lack of progress on short-term objectives.

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### Progress at Private School Supports Amounted to FAPE

- ◆ **M.C. et. al. v. Mamaroneck Union Free Sch. Dist., 73 IDELR 48 (S.D.N.Y. Sept. 28, 2018).**
  - ◆ The progress reports from the student's private school placement supported the district's decision to offer the student an IEP placing the student in a co-teaching classroom with daily resource instruction.
  - ◆ The parents argued that the student's progress was due to the small, highly structured classes at the private school.
  - ◆ However, the Court held that due to the student's improvements, the IEP offered FAPE.

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## District Provided FAPE Despite Lack of Formal BIP

◆ **S.W. v. Abington Sch. Dist., 73 IDELR 179 (E.D. Penn. Dec. 17, 2018).**

- ◆ Because a district's IEP included behavioral interventions that reduced the student's serious disciplinary incidents, the district overcame a claim that it violated FAPE by failing to conduct an FBA and implement a formal BIP
- ◆ The district appropriately considered the use of positive behavioral interventions by providing the student individualized behavioral management systems, daily check-in/check-outs, social skills training, and positive behavior motivators.
- ◆ The student made significant behavioral and academic progress with such services, so the student's IEP was appropriate in light of the child's circumstances.

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## Student's Inability to meet All IEP Goals Not Denial of FAPE

◆ **D.F. v. Smith, 74 IDELR 75 (D.Md. Mar. 28, 2019).**

- ◆ A parent was unable to obtain reimbursement for her child's private school when her child made incremental progress over three years, even though he did not meet all his IEP goals.
- ◆ The student was able to achieve smaller objectives of the IEP goals for written language, social and emotional development, occupational therapy, reading, speech-language, self-help, and classroom behavior in addition to meeting his math goal.
- ◆ "Students with autism may not progress linearly or consistently; the nature of their disability suggests that any academic and social progress...may be intermittently."

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## Appropriate in Light of Student's Circumstances Does Not Mean Maximum Potential

◆ **A.A. ex rel. K.K. v. Northside Indep. Sch. Dist., 120 LRP 9212 (5<sup>th</sup> Circ. March 6, 2020).**

- ◆ Here, the parent filed suit against the district alleging denial of FAPE due to academic regression.
- ◆ However, the Court noted that the IEP team appropriately revised the student's IEP goals to account for progress and the student made progress in fine motor skills.
- ◆ The Court explained that the standard is not to provide opportunity for maximum potential or to "insulate a child from experiencing hardships."
- ◆ The Court noted that despite being absent 46 days in one school year, the student made notable gains academically and socially.
- ◆ Thus, the Court found that the district took the necessary steps to ensure the students success and upheld the District Court's finding that student's progress was appropriate in light of his circumstances.

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### Repeated IEP Goals with Little Progress Denied FAPE

- ◆ **Preciado v. Board of Educ. of Clovis Mun. Schs., 120 LRP 9731 (D.C. N.M., March 11, 2020).**
  - ◆ The District Court found that the evidence showed that the district offered “extremely similar goals and recommendations” on the student’s IEP for three years and the district failed to provide adequate instruction in reading and writing.
  - ◆ The Court also noted that the special education teacher incorrectly believed that simple repetition taught students how to read.
  - ◆ Finally, the District Court held that for those reasons coupled with the fact that the student made little progress in three years the district denied the student FAPE and upheld the IHO’s decision ordering the district to pay compensatory education.

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### Evaluative Data May Support a Placement Decision

- ◆ **J.D. by D.D. v. Pennsylvania Virtual Charter Sch., 120 LRP 37000 (E.D. Penn., Nov. 30, 2020).**
  - ◆ The March/April 2018 IEP provided J.D.’s present levels of behavior functioning, academic achievement, occupational therapy functioning, speech and language functioning, physical therapy functioning, and performance for transition planning in education, employment, and independent living.
  - ◆ The Hearing Officer found that the present levels of performance—to the extent district was allowed to develop it (parent refused permission to evaluate some skills)—is comprehensive and provides a foundation for the IEP goals.
  - ◆ The district court affirmed the hearing officer’s ruling explaining that the goals were numerous and appropriate, each providing clear and measurable guidance/structure for the student’s progress, and each supported by appropriate instruction and modifications.

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### Trivial Progress Results in Payment of Private Placement

- ◆ **A.D. v. Creative Minds Int’l Pub. Charter Sch., 77 IDELR 163 (D.C. Sept. 28, 2020).**
  - ◆ The Court found that the district failed to provide a FAPE because the IEP failed to include any goals relating to math and because it reduced her specialized instruction in written expression.
    - ◆ The district reduced the student’s specialized instruction in written expression by 30 minutes a week despite the student’s repeated failure to meet her IEP goals.
  - ◆ The Court ordered the district to reimburse the parents for the student’s unilateral placements.
  - ◆ The Court explained that “trivial progress is not enough to satisfy the IDEA’s FAPE requirement” regarding the appropriateness of the IEP.

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## IEP Failed to Enable Progress

◆ **Downingtown Area Sch. Dist. v. G.W., 77 IDELR 155 (E.D. Penn, Oct. 8, 2020).**

- ◆ The District Court held that due to the "student's progress stagnating during the second half of the 2016-17 school year [and] his district's approach to addressing his needs" the district denied the student a FAPE.
- ◆ The denial of FAPE was a result of "repeating many of his IEP goals, failing to substantially change his programming, and failing to reevaluate him before developing a new IEP," which was not "reasonably calculated to enable a child to make progress appropriate in light of his circumstances."
- ◆ To avoid this type of suit, the IEP "team should have either changed the five goals it repeated, adjusted the student's programming to reverse his stagnation, or both, or at least explained in the IEP why it wasn't changing the goals."

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## Districts Should Continuously Document all Data and Progress

◆ **McKnight v. Lyon County Sch. Dist., 120 LRP 20418 (9<sup>th</sup> Cir., July 8, 2020).**

- ◆ Parent claimed that the district should have provided the student with an aide.
- ◆ Although the child did not meet the standardized testing cutoff scores for his grade, the child earned passing marks.
- ◆ The Ninth Circuit found that the child's progress reports provided sufficient information about the child's progress to show that the child did not require an aide to benefit from his instruction.

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## Tips for Collecting Legally Defensible Data




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### Best Practices in Student Specific Data Collection

- ◆ Prior to the IEP meeting, obtain the following information:
  - ◆ Present levels of performance (PLOPs) on all IEP goals:
    - ◆ Compared to Peers- How does the child's skills (PLOPs) compare to same age peers based on universal screeners, normed assessments, or other grade level expectations (when such data is available)?
    - ◆ Growth- What was the child's rate of improvement (ROI) on IEP goals?

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### Best Practice: Measurable PLOPs

- ◆ Just as your goals must be measurable, your data should also be measurable so you can legally defend the IEP.
- ◆ Link your goals to your present levels of performance and previous rate of progress.
- ◆ The PLOPs should include baseline data to help establish appropriate and measurable goals.
  - ◆ Skill area (e.g., sight words, phonics, comprehension)
  - ◆ Instructional level v. grade level
  - ◆ Measurement (e.g., # correct, % correct, # in timeframe)
  - ◆ Conditions (e.g., timed/untimed, w/ prompting, with AT)

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### Lessons from the Cases

- ◆ Goals should make sense in light of the child's circumstances
  - ◆ Present levels
  - ◆ Previous rate of progress
  - ◆ Other circumstances surrounding the child

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## Best Practices

- ◆ Summarize progress since last IEP.
- ◆ Review with IEP team at IEP meeting.
- ◆ Use this progress data to propose new goals and special education/related services.

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## Lessons from the Cases

- ◆ The IEP should be reviewed and revised regularly if the child is not making meaningful progress (or is making unexpected slow progress) towards IEP goals:
  - ◆ Add services?
  - ◆ Change services?
  - ◆ Change intensity or duration of services?
  - ◆ Add accommodations?
  - ◆ Obtain FBA/BIP?
  - ◆ Address external factors?
  - ◆ Amend goals to more accurately reflect new data/present levels?

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## Districts Must Provide FAPE

- ◆ The district is responsible for ensuring the child receives FAPE in the LRE, regardless of whether the parent agrees.
  - ◆ The district should not propose an IEP it does not believe provides FAPE in the LRE.
    - ◆ If the child does not make progress, the district is responsible.
  - ◆ If the district disagrees with a parent's demands, the IEP team should have some data or information to support its position.
    - ◆ Be careful about record reviews for reevaluations, particularly with challenging cases.
    - ◆ Your expertise alone may not be enough to counter data provided by the parent—Collect data, reevaluate, observe.....
    - ◆ Prior written notices are extremely important- Make sure to provide the "Why" to help legally defend the district's decisions.

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## Analyzing the Data: Best Practices



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## Making Data Based Decisions

Present Levels

➔

Goals

➔

Progress Monitoring

It is difficult to write legally defensible goals without solid present levels of performance. Similarly, it is risky to try to defend a child's progress without solid PM data.

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## Establishing Clear Present Levels

- ◆ Many times data for the present levels can be analyzed and reported in multiple ways.
- ◆ For example....

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## Examples of Present Levels

- ◆ AIMSweb Reading Data:
  - ◆ Grade Level Passage: 58 wcpm on 1 min. passage
  - ◆ Grade Level Passage: 92% accuracy on 1 min. passage
  - ◆ Grade Level Passage: 37%tile on national norms
  - ◆ Instructional Level Passage: 76 wcpm on 1 min. passage
  - ◆ Test the Limits on Instructional Level: 203 wc to read passage
  - ◆ Test the Limits on Instructional Level: 3 min. 7 sec. to read passage

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## Establishing Clear Present Levels

- ◆ When reporting data in the present levels:
  - ◆ Consider the child's deficit skills (e.g., fluency vs. phonics).
  - ◆ Consider whether there is current data to support the skill deficit.
  - ◆ Consider whether the data is meaningful for developing annual goals.
  - ◆ Consider which norms are most appropriate (e.g., age vs. grade level, local vs. national).

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## Establishing Clear Present Levels

- ◆ Make sure to clarify the conditions surrounding data in the PLOP when using accommodations/deviations from standard procedures:
  - ◆ With AT device
  - ◆ Testing the limits
  - ◆ Extended time
  - ◆ Read aloud

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## Establishing Clear Present Levels

- ◆ What is the goal for the student?
  - ◆ Increased Fluency?
    - ◆ Ex. Timed Reading Probe
  - ◆ Increased Accuracy?
    - ◆ Ex. Percentage correct on Math probe
  - ◆ Increased Frequency?
    - ◆ Ex. Increased number of requests
  - ◆ Increased Consistency?
    - ◆ Ex. Occurs over multiple sessions
  - ◆ Increased Skill Level?
    - ◆ Ex. Improve instructional level of reading skills by meeting certain criteria

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## Establishing Clear Goals

- ◆ Examples of Potentially Problematic Year Long Goal for 3rd Grader:
  - ◆ “When provided with a one-minute reading fluency progress monitoring probe at the 3<sup>rd</sup> grade level, Sean will increase his reading fluency to 80 words correct per minute.”
  - ◆ “When provided with a one-minute reading fluency progress monitoring probe at grade level, Sean will increase his reading fluency to 80 words correct per minute.”
- ◆ Example of More Measurable & Meaningful Year Long Goal:
  - ◆ “When provided with a one-minute reading fluency progress monitoring probe at grade level, Sean will increase his reading fluency to at least 40<sup>th</sup> percentile compared to grade-level peers.”

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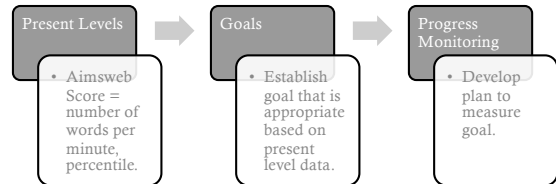
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## Data Must be Measurable




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### Measuring Student Progress: Rate of Improvement Over Time

- ◆ Determining student progress on IEP goals when score is a single number (e.g., number correct):
  - ◆ What was child's Rate of Improvement (ROI) on IEP goals?
  - ◆ Formula:
    - ◆  $(\text{Current Score} - \text{Baseline Score}) / \# \text{ of weeks of instruction between scores} = \text{ROI per week}$
  - ◆ Example:
    - ◆  $43 \text{ wcpm} - 38 \text{ wcpm} / 10 \text{ weeks} = 0.5 \text{ word increase per week of instruction}$

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### Measuring Student Progress: Consideration of Grade Level Expectations

- ◆ Determining student progress on IEP goals compared to peers:
  - ◆ What was child's ROI in a skill area COMPARED to the ROI of all students? \*only available for skills assessed with universal screeners.
  - ◆ Formula
    - ◆ Use formula on previous slide for Student & Peer (norms table).
    - ◆ Compare Peer's average (or benchmark level) weekly ROI to Student's weekly ROI.
  - ◆ Example:
    - ◆ Student:  $(80 \text{ wcpm} - 65 \text{ wcpm}) / 15 \text{ weeks} = 1 \text{ word increase per week of instruction}$
    - ◆ Peers:  $(125 \text{ wcpm at benchmark} - 100 \text{ wcpm at benchmark}) / 15 \text{ weeks} = 1.67 \text{ word increase per week of instruction}$
    - ◆ Student improved reading fluency by 15 wcpm but gap has increased by 0.67 wcpm per week of instruction.

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### Measuring Student Progress: Consideration of Grade Level Expectations

- ◆ Other Methods for determining student progress with IEP goals:
  - ◆ What is the difference in student's current skill level and grade/age benchmark/expectation COMPARED to the difference between the student's prior skill level and grade/age benchmark/expectation as such time?
- ◆ Ex.
  - ◆ April 2019: 2.6 GE in Functional Communication Skills when in 6.8 grade level = 4.2 grade level delayed
  - ◆ April 2020: 3.4 GE in Functional Communication Skills when in 7.8 grade level = 4.4 grade level delayed
  - ◆ Student improved functional communication by 0.8 GE but gap has increased by 0.2 grade level.

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## Enough Progress?

- ◆ So, do these examples show enough progress to support a provision of FAPE?
  - ◆ It depends....
    - ◆ On the child's individual circumstances.
    - ◆ Is student "Fully Integrated"?
    - ◆ On the knowledge of the team when the IEP was developed (i.e., was the IEP reasonably calculated to provide FAPE?).

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## Making Data Based Decisions

- ◆ When reviewing data/providing progress reports on IEP goals, consider:
  - ◆ What was the child's present levels and where is the child now?
  - ◆ Is the child making growth? Is the child closing the gap with peers? Making larger gains than the past?
  - ◆ If no or slow progress, then consider whether IEP team needs to meet again to address amending goals and/or IEP services.

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## Overcoming the Challenges of Collection Data in a Virtual Setting




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## A Pandemic Does Not Relieve a District of Its Duty to Provide a FAPE

- ◆ **Hernandez v. Lujan Grisham, 120 LRP 31613 (D.C.N.M. Oct. 14, 2020).**
- ◆ District Court held that a student with learning disabilities was entitled to an IEP that reflected her need for in person learning even though the state argued that the district developed the IEP based on state health regulations issued during the pandemic.
- ◆ Court indicated the state's re-entry guidance permitted in person instruction for special needs students and the state had misinterpreted the guidance as forbidding in-person attendance.

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## Data Collection with Virtual Instruction

- ◆ When developing IEPs and some (or all) instruction may be remote, consider how you are going to collect data on IEP goals.
  - ◆ Can you continue with data collection as established in the prior IEP?
  - ◆ Do adjustments need made to the form of data collection and/or the goals (measurement)?

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## How much Data can Reasonably be Collected?

- ◆ Make sure IEP doesn't require more data collection than what is possible.
  - ◆ If IEP says daily data collection (which can only be collected in-person), that will likely need to be adjusted if only in-person 4 days per week.
- ◆ May need to reduce the number of goals in the IEP due to the nature of instruction during hybrid learning (which would also require less data collection).
- ◆ May need to seek alternative forms of data collection that can occur remotely.
- ◆ May need to reduce data collection to allow for more time for meaningful instruction when in-person.
  - ◆ If you reduce data collection, you want to make sure you have enough to show progress during reporting period.

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## Remote Data Collection

- ◆ What can readily be obtained?
  - ◆ Online progress monitoring tools
  - ◆ Pre/Post tests for online curricular materials
  - ◆ Progress monitoring using live visual audio platform
  - ◆ Observations of student behavior
  - ◆ Classroom performance
  - ◆ Checklists and rating scales for student behavior and functional skills

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## Sometimes you just need a little help...



It takes a village to educate a child. Combining the expertise of different professionals will lead to the best outcomes for students with disabilities.

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## Thank you!

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