

IEP Essentials: Lessons Learned from Legal Analysis

Advocate Academy Webinar
Wednesday October 3, 2007

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Section I: Legal Issues in Transition Planning

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Brad's story...

- 8th grade IEP: Brad wants to work at HyVee
- courses of study: unspecified "regular" vocational education in HS
- Community experiences, employment & daily living skills: NO: addressed in HS
- NO to **functional vocational evaluation** "
- NO graduation criteria specified

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10th Grade IEP...(2003-2004)

- Brad's first vocational goal: Brad will develop functional communication skills and independence in a vocational setting.
- STO: communicate appropriately with co-workers & "following directions and redirection when proposed by supervisor"
- No attempt to meet goal (interest test to all)
- No vocational setting provided until **2005**

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11th Grade IEP (2004 – 2005)

- IEP: no previous exp. in employment settings and Brad "does not have job-entry level skills"
- **Functional Vocational Assessment** box = Yes
- 2nd semester activity only: age 17, (16 months prior to anticipated graduation):
- First employment skill goal on IEP: "follow directions, ask appropriate questions for direction" in EBCE...

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EBCE...

- 2nd semester only; 2 ½ hrs. credit
- 9 weeks at sign company "staff appeared on the job site to conduct a Neither the [school district] nor the AEA personal evaluation of Brad or to coach Brad while he was there. The AEA WEC did visit the placement to have the job supervisor complete the evaluation forms. Only the supervising employer was directly involved with Brad's training and evaluation while on the jobsite"...

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EBCE...

- Last 6 weeks of year, “stocker” at Hy-Vee and assigned unspecified “cleaning” activities
- WEC testified Hy-Vee supervisor told him Brad not ready for gainful employment
- “Neither the [school district] nor AEA staff appeared on the grocery store job site to directly conduct an evaluation of Brad or to coach him in his job performance. The grocery store supervisor was the sole source of instruction and evaluation for Brad’s on the job experience”...

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12th Grade IEP (2005 – 2006)

- Brad enrolled in OJT course for 2 credits each sem.
- Job = stock shelves of bottled water and fruit drinks in HS cafeteria (WEC observed)
- Brad “bored”, P’s request other placements
- Six weeks prior to graduation, Brad given an “Interest Profiler” (nurses aide) other tests offered

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Spring meetings...

- Minutes: Dir. Sp Ed “Schools job is to address secondary issues” [later testified adult service agencies provide transition services]
- Transition programs discussed: Brad’s parents like VESS (ineligible if graduate) **DHS for 1st time**
- Dir: Brad has 51 credits (CSD = 40) so “I guess it is the opinion of the IEP team that Brad is ready to graduate”

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Brad's Parents file for DPH...

- Request to remain in school until IEP goals were met & transition services provided (VESS)
- Attny Letter: VESS considered and rejected - Brad "has or will meet the school graduation criteria"... "Brad can work on his post-secondary living, learning and transition through post-secondary programs through Vocational Rehabilitation Services".

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Summary for Post-Secondary Living, Learning, and Working

- Expectations: Living = more self-reliant possibly supervised apt. setting; Learning = attend college and major in art; Working = find a job where he could apply his art skills
- Goal areas (3 yrs): mobility, comprehension, composition and employment (CLP = all met)
- Recommendations: Living = support for living independently (adult supervision); Learning = extended time to complete assignments, repetition with new tasks, tape recorder for note taking, computer for written assignments, planning calendar; Working = written instructions & job coaching starting a new job.

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Center for Disabilities and Development (June 6, 2006, Iowa City)

- Conducted less than 10 days after Brad's planned graduation date: "Given that he is not yet 21 years old, he would seem to be an excellent candidate for a transition program that focuses on teaching life skills and vocational skills to improve his ability to function as independently as possible as an adult"

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Testimony...

- Dir: no student in SD should need additional transition programming (5th year) since SD can meet needs
- T's would have provided living skills help, if needed and asked.
- Program based on needs, further programs from adult service agencies
- AP: Brad needs to graduate and "move on"...life skills can be taught in the home

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More testimony...

- Several witnesses fro SD and AEA = P's never requested assessments for transitional or vocational services
- AEA Adm: vocational skill development = available through adult service providers
- WEC: functional vocational skills not ever assessed by [SD (if done, 11-12th grade), but expected to be done elsewhere by other agencies (Voc Rehab)

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Red Flags?



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2004 Predictions... Focus on Transition

The focus on transition represents acknowledgement of and continuous efforts to improve the low graduation rates and dismal post-school achievements of students with disabilities (Blackorby & Wagner, 1996)., & Mack, 2002).

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The Numbers & Facts...

- 22% S's w/d fail to complete HS (9%)
- People w/d 18-64 less likely to be employed full or part-time (32% vs 81%)
- 1/3 of students with disabilities who need job training actually receive it
- 1/4 needing life skills training get it
- S's = minimal involvement in IEP & transition planning

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Handwriting was "on the wall"...

- Prior to reauthorization, confirmation of difficulties evident
- **President's Commission on Excellence in Special Education (U. S. Department of Education, 2002) Report...**

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Transition Excerpts:

The Commission is appropriately concerned that too many children fail to move from school to adult living more successfully...The Commission finds that transition services are not being implemented to the fullest extent possible and that meaningful results do not happen. . . The Commission finds that IDEA must be changed to clearly link students' long range transition goals to the development of the annual IEP goals, objectives and activities. . . These changes should redefine transition services as a results oriented process focusing on post-school and in school results including academic and nonacademic alternatives (p. 46-49).

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Purpose of IDEA 2004...

Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by having high expectations ...in order to "be prepared to lead productive and independent adult lives, to the maximum extent possible [20 U.S.C. § 1401(c)(5)(A)]

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Accountability...

As the graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities [20 U.S.C. § 1401 ©(14)].

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Definition

- A coordinated set of activities for a child with a disability that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation...

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- is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and
- includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation [20 U.S.C. § 1402(34)].

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State Advisory Committee

Must include "not less than 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities" [20 U.S.C. § 1402(a)(21)(B)].

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Required Component of the IEP

Beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter:

- appropriate measurable postsecondary goals **based upon age appropriate transition assessments** related to training, education, employment, and, where appropriate, independent living skills
- the transition services (including courses of study) needed to assist the child in reaching those goals [20 U.S.C. § 1414(d)(1)(A)(VIII)].

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Required Members of the IEP Team

- “the public agency must invite a child with a disability to attend the child’s IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals”...

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- If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child’s preferences and interests are considered...

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- To the extent appropriate, with the consent of the parents or a child who has reached the age of majority ...the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services [34 C.F.R. § 300.321(b)] .

The Consent Requirement

A new § 300.622(b)(2) has been added to provide that parental consent must be obtained before personally identifiable information is released to officials of participating agencies that provide or pay for transition services.

Failure to Meet Transition Objectives

If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP [20 U.S.C. § 1414 (d)(6)].

State Monitoring

“require each State to monitor the local educational agencies located in the State ...using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas: (A) Provision of a free appropriate public education in the least restrictive environment. (B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services ... (C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification” [20 U.S.C. § 1416(a)(3)].

Highlighted Change: SOP

- The LEA must also provide a summary of the child’s academic and functional performance when IDEA services are terminated due to graduation or age eligibility [20 U.S.C. § 1414(c)(5)(B)(ii)].

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Recommendations included...

- The summary must include recommendations on how to assist the child in meeting post-secondary goals. This required summary may serve several purposes, including the continued coordination of post-school activities. For example...

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School Personnel familiar...

- Adult service agencies will have a clear picture of the child's strengths and needs, thus promoting the development of effective long range plans for the individual.
- The recommendations from school personnel familiar with the student's interests and preferences may ensure those plans are congruent with the student and family vision.

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Summary vs. Evaluation...

- IDEA required evaluation prior to change in eligibility with the exception for students who:
 - Ending their eligibility due to graduation from secondary school with a regular diploma or
 - Exceeding the age of eligibility for special education under state law.
- Written Prior Notice Must Be Given

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The Rest of Brad's Story

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Conclusions of Law (L. Bartlett)

- While many experts in the area of transition planning encourage readiness activities and career exploration in grades as early as elementary school, the SD chose not to begin Brad's career exploration and experience until he was nearly finished with his high school years"...

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Transition planning defined...

- By the beginning of high school, a plan should start coming together for accomplishing specific goals that will lead a student to life as an adult.
- Quoting Will: a shared responsibility that extends beyond service coordination to address the quality and appropriateness of each service area.

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The new law & Brad

- "Incumbent upon the JSD staff to stop and reflect upon the new legal requirements of the IDEA and the school's responsibilities to students. Instead the staff members of the SD and AEA appeared to lower their heads and move forward without adequate consideration of 'measurable postsecondary goals based upon age appropriate transition assessments'...even in the face of parental allegations that Brad was not prepared to gainful or other employment and had not acquired independent living skills"

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Courses alone...

- “it is not likely possible that any curriculum can be designed to meet the needs of ALL students with disabilities. To think such a probability is to ignore the words “individual” in IDEA and IEP, and to do so is both illegal and unethical”

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“No reasonable explanation” for no assessment...

- Only that “Brad’s parents had not requested them and that adult services agencies, such as Vocational Rehabilitation, were expected to do the assessments”
- IDEA “places responsibilities on state and LEA for noncompliance with its mandates, not parents and other service agencies. The buck stops there.”

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Decision

- FAPE denied: failure to provide **functional vocational evaluation** ID in 2 IEPs and Brad’s needs
- Brad should not graduate
- Two outside consultants and IEP team to “fully plan for the assessment and consideration of Brad’s current remaining educational needs and skill deficits to be addressed, if any, prior to his transition to post-high school experiences” (quoting)

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Lessons from the Caselaw

Etscheidt, S. (2006). Issues in transition planning: Legal Decisions. *Career Development for Exceptional Individuals*, 29(1), 28 – 47.

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Methodology & Sample

- Purposive sample of 36 published decisions (SEA = 31; DC = 5)
- Qualitative content analysis (Krippendorff, 2004)
- S w/ MD (8), LD (5), EBD (4), autism (4), Multiple (4), PH (3), OHI (2), ADHD (2), NS (2)

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#1: Contact Agencies

- Early!!! Interagency contacts BEFORE graduation (at least by 16!)
- School District must initiate
- The IEP must document both the contact and agreed-upon services.

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Independent School District No.

0011, Anoka-Hennepin, 102 LRP 7054 (SEA MN 2000)

- 17 year old Male with MD and Down Syndrome
- P claimed no agencies invited. SD claimed P had contacts but didn't share with SD.
- For P: IEP did not reflect representation of other agencies likely to be responsible for providing and paying for transition services. "Ignorance is not excuse" for failing to invite agencies.

#2: Solicit Student Input

- If the student does not attend, the school district must take other steps to ensure that the student's preferences and interests are considered [4 C.F.R. § 300.344(b)(2)]
- Considering student interests and preferences does not obligate school districts to acquiesce to student-preferred plans, providing the district-proposed transition plan is appropriate.

Caribou School Department,

35 IDELR 115 (SEA ME 2001)

- Post graduate 19 year old male with ED
- P = SD did not involve them or the student in transition planning. SD = program was adequate because the student graduated from high school.
- For P: SD did not consider the need for transition planning prior to the S turning 16 years of age and did not involve the parent or the S or P. The S received no advice or assistance in transition...quote.....

- This student had been basically set adrift and expected to determine his own needs, assess his own college and career plans, choose his own courses and, from age fourteen on, just when the school's responsibility regarding transition planning begins, be his own advocate. (35 IDELR 118).

Madison Metropolitan School District,

Post Graduate male with William's Syndrome

37 IDELR 26 (SEA WI 2002)

- P = requested placement in performing arts program since S had expressed interest.
- SD = S's program of daily living skills, vocational awareness, adaptive behavior goals, & vocational training (on the job training, paid employment, & supervised independent housing) appropriate
- For SD: IEP had appropriate & beneficial transition plans. S's interests addressed via participation in band & other fine arts services.

#3: Individualize Transition Plans

- Avoid "Checklist" Plans
- Functional vocational assessment ensures individualization of transition plan

East Penn School District v. Scott B.,

29 IDELR 1058 (ED PA 1999)

20 year old male with multiple disabilities

- P = transition plan not based on evaluation, contained inadequate services, and included no goals.
- SD = plan was adequate, had specific goals, and addressed vocational education.
- For P = Transition plan not individualized for S's unique needs. SD provided only vocational training, which was not based on vocational evaluation.

#4: School District's Obligations

- IDEA = LEA responsible for planning, providing and evaluating transition services until S graduates
- Final IEP must list services to be provided by adult agencies
- SD must promote or "put students on a path" to independent living but not necessarily achieve that goal.
- SD not responsible for job placement or post-school success, but appropriate and genuine supports must be provided.

Susquehanna Township SD v. Jelani J.,

39 IDELR 5 (PA Comm. Ct., 2003)

19 year old female with dyslexia, memory disorder, and ADHD

- P =SD did not provide transition service of 1 year post school program for college prep as specified in the IEP.
- SD = S met graduation requirements & had opportunity to apply to a postsecondary program.
- For P = SD failed to provide agreed upon transition services. S must complete the IEP program, as well as earn credits for graduation.

North Hunterdon-Voorhees Regional High Board of Ed. 41 IDELA 171 (SEA NJ 2004)

22 year old male with multiple disabilities

- P = reimbursement for placement at multiyear transition program
- SD = had offered reasonable transition opportunities, inc. community based instruction program, summer job program, and guidance counselor.
- For SD = Transition obligations need not maximize benefit but must offer meaningful benefit "genuine chance to explore options beyond high school"

#5: Transition Plans Must Be Appropriate

- The failure to provide transition services has consistently been viewed as a violation of the substantive requirement of IDEA.
- Such failure denied students a FAPE and resulted in tuition reimbursement and compensatory education

Bd of Ed of the Arlington Central School District, 36 IDELR 193 (SEA NY 2001)

17 year old male with OHI

- SD = appealed decision that the IEP denied FAPE. Failure to develop transition plan was "harmless error."
- P = enrolled S in a private school and requested tuition reimbursement
- For P = SD deficiencies in transition planning were substantive violations that denied the student FAPE

Half-Hollow Hills Central School District,

35 IDELR 169 (SEA NY 2001)

High school
age male
with autism

- P = IEP failed to specify transition needs and services as per IDEA.
- SD = a variety of transition services had been offered to the student throughout his high school career.
- For SD = Formal state of transition services needs missing; but SD offered a “useful” program for success in school, postschool, and independent living

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Johnson & Rich (2003)
The re-evaluation &
transition services:

Best practices for
school psychologists
and evaluation teams.
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<http://www.seattleu.edu/ccts/docs/Trans%20Re-Eval%20Process.pdf>

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National Transition Documentation Summit

- Worked 2 years to develop SOP
 - Representatives from NASP, CEC's DCDD & DLD, LDA, NCLD
 - “Passport” student carries from secondary to post school
 - “Merges” data for student to self advocate
 - “Bridges” standardized, authentic, & performance assessment’ (Kochhar-Bryant, 2007)
- <http://wwwstatic.kern.org/gems/specialEd/SOP.pdf>

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SOP: Summary not New Data

- Summary of existing data in academic & functional areas (Not new set of evaluation & assessment data)
- May include (not limited to):
 - Academic skills (reading math, written language)
 - Cognitive abilities (problem solving, attention, communication)
 - Functional areas (social skills, independent living, career/vocational skills, self determination)

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SOP: Invaluable for S's and post-secondary providers

SOP includes

- Background & demographic info
- S's post-secondary goals
- PLAAFP
- Accommodations, modifications, and assistive technology provided & effective in secondary environment
- Recommendations to assist S in meeting post-secondary goals
- Student input

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Preparation for Transition from School

Begins upon school entry.



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Section 2: Behavioral Intervention Plans

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The New IDEIA

- A local educational agency may not use more than 15 percent of the amount such agency receives under this part... to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and **behavioral support** to succeed in a general education environment [20 U.S.C. § 1413(f)(1)].

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- The IEP Team shall in the case of a child whose behavior impedes the child's learning or that of others, consider the use of **positive behavioral interventions and supports**, and other strategies, to address that behavior [20 U.S.C. § 1414(d)(3)(B)(i)].

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- A regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate **positive behavioral interventions and supports**, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel [20 U.S.C. § 1414(d)(3)(C)].

BIP's: A Review of the Case Law = Five Themes

Etscheidt, S. (2006). Behavioral intervention plans: A pedagogical and legal analysis of issues. *Behavioral Disorders, 31*(20) 221-241.

BIP's Must be Developed When Behavior is Interfering with Student Learning

Mobile County Board of Education
(SEA AL 2004)

14 year
Old Male
w/multiple
disabilities

- S's escalating behavior resulted in physical attack on aides. SD argued that program provided to S was appropriate.
- For P: Omission of FBA and BIP deprived S of educational benefit. Ordered certified behavior analyst engaged at SD expense to evaluate and develop IEP and BIP.

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Larson v. Independent School District No.
361 (D.C. MN 2004)

Elementary
aged M
w/ EBD and
ADHD

- P contended that SD failed to complete FBA and BIP. SD asserted FBA not required unless S removed from placement for more than 10 school days. SD also argued that "informal" BIP was integrated into the IEP.
- For P: Since S behaviors sole focus of IEP, FBA and BIP must be conducted.

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Maine School Administrative District #61
(SEA ME 2004)

10th grade
Male
w/ LD later
changed to
OHI

- P argued SD had failed to develop BIP for 3 years. SD social worker developed a "responsibility contract" to address behavior.
- For P: SD's "responsibility contract" not a substitute for BIP. Tuition reimbursement for private school and transportation costs awarded.

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BIP's Must Be Based on Assessment Data

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Montgomery County Board of Education (SEA AL 2004)

High school
M
w/ SLD

- P challenged the appropriateness and sufficiency of evaluations resulting in the BIP. SD described appropriate and extensive efforts to improve behavior.
- For SD: BIP based on appropriately conducted and interpreted evaluations. Ineffectiveness of BIP due to lack of attendance, lack of participation, and lack of cooperation by both S & P.

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Ingram Independent School District (SEA TX 2001)

13 year old
Male
w/ LD

- P argued SD failed to provide appropriate FBA and implement or modify the BIP to meet S's needs. SD argues both FBA and BIP adequate.
- For P (in part): SD ordered to provide more detailed FBA addressing behavior function. "Cursory" FBA and use of home time ~~outs~~ in BIP inappropriate.

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Nevada School District SEA AK 2002

13 year
old
Male
w/ ED and
ADHD

- P alleged BIP with shortened school day, parent escort to and from school, and adult supervision and escort throughout the school day inappropriately denied student FAPE. SD maintained appropriateness of BIP.
- For P: BIP outdated and inappropriate. SD ordered to conduct extensive psychoeducational and neuropsychological evaluation to help explain the student's disabilities as exhibited academically, psychologically, and socially.

BIP's Must be Individualized

Upper Dublin School District
(SEA PA 2004)

7th grade
Female
w/ ED and
ADD

- P charged that program did not include individualized supports to address behavior and self concept. SD offered group counseling to meet student's needs.
- For P: SD offer of group counseling did not equate with specific and individualized interventions.

BIP's Must Include Positive Behavioral Supports

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School Town of Highlands and Northwest Special Education Cooperative (SEA IN 2005)

10 year old
Male
w/ BD

- P alleged that BIP lack specific strategies, social skill instruction and staff not trained to address S's behavioral needs. SD contended BIP was appropriate.
- For SD: BIP included positive intervention strategies designed to confer educational benefit to S.

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Mason City Community School District and Northern Trails area Education Agency 2 (SEA IA 2003)

14 year old
Male
w/ ODD
and
ADHD

- P charged that BIP was punitive and that suspensions and in school suspensions denied FAPE. SD argued BIP was appropriate and use of suspensions permissible.
- For SD: BIP included a variety of positive behavioral strategies, including crisis intervention & suspensions not resulting in change of placement permitted.

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Pell City Board of Education (SEA AL 2003)

- 13 year old Male w/ MD, ADHD, And Conduct disorder
- P requested 1:1 behavioral aide. SD denied aide asserting S's behavior improved due to BIP.
 - For SD: S > behaviorally and academically. BIP based on consultation with psychiatrist and psychologist & included classroom aide, cool off periods in principal's office, more time with sped teacher, and frequent contacts with mother.

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Neosho R-V School District v. Clark (8th Cir. 2003)

- 12 year old Male with autism/Asperger's Syndrome
- SD appealed decision that it failed to provide FAPE. Specifically, P charged BIP had not been adequately developed or implemented.
 - For P: No cohesive plan in place; only goals and objectives without specific strategies.

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BIP's Must Be Implemented As Planned & Monitored

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Board of Education of Township High School District #211 v. Lindsey R. (ND IL 2005)

High school Female w/ Rett Syndrome

- P alleged BIP not consistently implemented and staff not trained to correctly implement. SD argued that BIP implementation was satisfactorily.
- For SD: Although not "perfect" due to complexity of plan, SD made good faith effort to implement BIP in large, comprehensive high school

Based on Assessment Data...

The selection of empirically-validated, positive behavior supports in the BIP must be based on assessment data. The IEP team may select validated interventions matched to assessment data (Barton-Arwood, Wehby, Gunter, & Lane, 2003)

Forrestville Valley Community Unit School District 221 (SEA IL 2002)

10 year old Male w/ Landau Kleffner Syndrome impairing Language and behavior

- P alleged SD failed to provide services to address S's behavioral needs.
- For P: SD failure to implement BIP resulted in crisis for student. SD ordered to hire specialists to oversee BIP and train staff.

Pedagogical Support

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Developed when Needed...

- Pre-school teachers report that disruptive behavior problems are the most significant challenge they face (Joseph & Strain, 2003).
- The persistent behavior problems of middle school students puts them at risk for interpersonal conflict and academic problems (Hester, Gable, & Manning, 2003)
- The inability to successfully address problem behavior at the secondary level is linked to low graduation rates, unstable employment opportunities, and incarceration (Kortering, Braziel, & Toompkins, 2002).

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The assessment should meet the technical requirements of IDEA, including the use of multiple data sources [20 U.S.C. § 1414(b)(2)(A)]. The assessment should also examine all areas of concern and be of utility to the IEP team in planning the student's program (Etscheidt, 2003).

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Individualized...

The selection of “one size fits all” or “cookie cutter” behavior plans will be ineffective (DuPaul, Eckert, & McGoey, 1997) and inconsistent with the federal mandate.

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Positive Interventions...

- Authors have concluded that a substantial data base of empirically-validated interventions exists for students with disabilities (Conroy & Brown, 2004).
- Lewis, Hudson, Richter, and Johnson (2004) identified four research-based practices to improve the behavior of students with emotional and behavioral disorders....

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Implemented & Monitored...

- IEP teams should include two evaluation practices: one to monitor the “faithfulness of the implementation of the (BIP)” (p. 16) and a second to evaluate the effectiveness of the BIP (Center for Effective Collaboration and Practice, 1998)

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- The evaluation section of the plan should indicate what will be monitored and how often the team will conduct observations to obtain evaluation data (Horner, Sugai, Todd, & Lewis-Palmer, 2000).

Providing High-Quality Supports to Students

Instruction

- Social Skill Instruction (Lane et al., 2003)
- Anger Coping Program (Larson & Lochman, 2002)
- Tools for Getting Along (Robinson et al., 2002)

Self-Management/Monitoring

- Self-Talk (Callicott & Park, 2003).
- On-task (Levendoski & Cartledge, 2000)
- Problem-solving (Hune & Nelson, 2002)

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Opportunities to Respond

- Task engagement & disruptive behavior
(Sutherland & Wehby, 2000)
- Choral responding (Gunther et. al., 1998)
- Response cards (Sutherland & Wehby, 2001)
- Preteaching (DePaepe et al, 1996)
- Choice-making (Jolivet, Wehby, Canale & Massey, 2001)

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Section 3: Progress Monitoring Lessons

Etscheidt, S. (2006). Progress monitoring: Legal issues and recommendations for IEP teams. *Teaching Exceptional Children*, 38(3), 56-60..

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IDEIA's 8 IEP Components

- 1. a statement of the child's present level of academic achievement and functional performance;
- 2. a statement of measurable annual goals;
- 3. a statement of the special education, related and supplemental services to be provided to the child;
- 4. an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities;
- 5. a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments;
- 6. a statement of dates and duration of services provided;
- 7. appropriate, measurable postsecondary goals and the transition services to be provided; and
- 8. **a statement of how the child's progress toward the annual goals will be measured** [20 U.S.C. § 1414(d)(1)(A)].

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Progress Reports

- The progress monitoring provision also requires that the IEP specify when periodic reports on the progress the child is making will be provided (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) [20 U.S.C. § 1414(d)(1)(A)(i)(III)].

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Addressing Lack of Progress

- Progress monitoring assists IEP teams in addressing any lack of expected progress toward the annual goals [34 C.F.R. § 300.324(b)(1)]

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Evaluating Curriculum Effectiveness

- Progress monitoring enables IEP teams to make valid decisions concerning the effectiveness of curriculum delivery (Peck & Scarpati, 2005).

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Compliance Difficulties

- While intended to be a tool to promote student achievement, progress monitoring often fails to effectively communicate vital and meaningful data (Pemberton, 2003).
- Progress monitoring is essential to evaluating the appropriateness of a child's program, yet there is less compliance with this required component of the IEP than any other (Yell, 1998).

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Four Lessons from the Case Law

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#1 = Lack of Plan

- In *Pennsbury School District* (SEA PA 2000) the HO concluded that an IEP lacked “adequate statements regarding how [the student’s] progress toward the annual goals will be measured” (102 LRP 10466)...

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Stronger conclusion:

- The most glaring deficiency was the absence of a notation as to whether [the student] had mastered any of his benchmarks...without the dates of mastery of benchmarks indicated on the IEP a parent cannot determine the progress that the child has been making during the school year...it is crucial that a parent (or other IEP member) be able to examine the IEP document to see if satisfactory progress is being made toward the attainment of the student’s annual goals and if not, whether there is a need for adjustments to his program (*Escambia County Public School System, SEA AL 2004*)(42 IDELR 248).

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Another story...

- Another RO noted that “simple checkmarks indicating progress rather than regression or achievement of [the student’s] goals” did not meet the requirements of IDEA and ordered the IEP to reconvene and draft an IEP with “objective measures of measuring progress” (*Rio Rancho Public Schools, SEA NM 2003, 40 IDELR 140*).

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#2 = No Responsibility for Progress Monitoring

- Progress monitoring is the responsibility of the IEP team.
- What will be monitored, who will monitor, when and where the monitoring will be conducted, and how the data will be reported must be included in the progress monitoring plan.

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Two Iowa Decisions

- Paras may assist, but IEP team must monitor progress.
- SD failed to monitor progress of 7 yr. old child w/ autism who was fully included in a regular first grade classroom.
- Para collected data, but Sp. Ed. Teacher specified on IEP did not regularly observe in the regular classroom and did not monitor or record progress toward goals:

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Quote:

- “Confusion of roles and responsibilities of IEP implementation and progress monitoring” may have been an “artifact of insufficient planning” for the child’s full inclusion (103 LRP 37969)

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A Similar Outcome...

- Associate of 19-year-old student with autism was responsible for instruction, behavior management, and data collection.
- IEP team failed to document his progress (P's had extensive data showing behavior deterioration and the inadequacy of his special education program).

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Quote from ALJ's Decision:

The progress monitoring data presented by the school district are vague for certain IEP components and nonexistent for others. Few meaningful data are available to help the IEP team review progress or confidentially convince this ALJ that the programs offered to [the student] were calculated to provide meaningful benefit" (41 IDELR 24).

3 years compensatory education awarded [*Linn-Mar Community School District and Grant Wood Area Education Agency 10* (2004),

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#3 = No Monitoring of BIP

- Although neither the IDEA nor federal regulations specified the components of a behavioral intervention plan (BIP), *Mason City Community School District and Northern Trails AEA 2* (2001) identified 5:
- a BIP must be based on assessment data
- be individualized to meet the child's unique needs
- include positive behavioral support strategies
- be implemented as planned
- be monitored to determine the effect of the planned interventions.

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BIP must be monitored...

- Another ALJ determined that the lack of specificity and progress monitoring for a BIP for a young child with Asperger's Syndrome rendered the IEP inappropriate (*West Des Moines Community School District and Heartland Area Education Agency*, 2002).
- The IEP team must "assess what is or is not working for [the student] whom everyone has agreed is dealing with significant behavioral challenges" (36 IDERL 222).

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#4 = No Monitoring of Progress Towards Graduation

- Case law has clarified that in order to graduate a student with a disability under IDEA, the student must meet a district's general graduation policies and achieve sufficient progress to IEP goals and objectives (*Kevin T. v. Elmhurst Community School District No. 205*, ND IL, 2001).
- Progress toward IEP goals, along with district policy concerning credits, must be considered in graduation decisions...

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- In *Black River Falls School District* (SEA WI 2004), HO concluded that although the student met general graduation requirements, he failed to make progress on IEP goals and objectives.
- No objective criteria were used to determine progress, and the district failed to make a determination about the sufficiency of progress and the student's readiness to graduate.

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#5 = Inadequate Frequency of Progress Monitoring

- Two decisions found that the frequency of progress monitoring was inconsistent with the IDEA's requirements or was not frequent enough to provide the IEP team with meaningful data.
- In *Alta Loma Elementary School* (SEA CA 2002), SD failed to report a student's progress toward IEP goals 3 times during the year, the frequency that parents of nondisabled children were informed. Parents argued that without such information, they were not able to participate fully in the development of their child's IEP. ..

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A Similar Outcome...

- The 19 year old student with a progressive muscular disorder in *Del Norte County Unified School District* (SEA CA 2000) required frequent data collection and quarterly assessments of his communication skills.
- The HO concluded that frequent assessment of communication progress would provide the IEP team "with the accurate assessment data needed to make any changes necessary in [the student's] communication devices and/or communication goals and objectives" (33 IDELR 50).

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Improving Progress Monitoring for Students with Disabilities

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Multiple Measures

- The IEP team must select an appropriate progress monitoring approach for each student goal or objective.
- Simple checkmarks or arrows as progress indicators will be insufficient. If checkmark summaries are used, they must be based on data collected and accessible to the IEP team.
- Those data should include direct measures, indirect measures, and authentic measures of progress.

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Direct & Indirect Measures

- Direct Measures
 - Behavior Observation
 - Curriculum based Assessment
- Indirect Measures
 - Rubrics
 - Goal attainment scaling
 - Student self monitoring.

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Authentic Measures

- Conferences
 - Student
 - Teacher
 - Parent
- Portfolios
 - Assistive Technology
 - Videotaping

123

Specify Who, Where & When

- Individuals responsible for data collection must be identified w/ location, dates, and time of data collection.
- The responsibilities for progress monitoring should be distributed to those members of the IEP team who are responsible for implementing IEP goals.
- The frequency of data collection must also be determined, so that IEP teams will have sufficient data for evaluating the student's progress.

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Summary

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Accountability Focus

- When the IDEA was reauthorized in 2004, progress monitoring remained a required component of an IEP while other provisions mandated greater accountability for student progress.
- The Presidential Commission responsible for recommendations concerning the reauthorization of IDEA highlighted the importance of adequate progress monitoring in several findings.

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Recommendation

“IDEA will only fulfill its intended purpose if it raises its expectations for students and becomes results-oriented...judged by the opportunities it provides and the outcomes achieved by each child”
(President’s Commission on Excellence in Special Education, 2002, p. 8).

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Progress monitoring is a vital component of an IEP and essential to evaluating the appropriateness of a child’s program.

By improving progress monitoring, IEP teams will ensure that the educational programs developed for students with disabilities will be meaningful and beneficial.

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Thank You!

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