

Wrightslaw Advocacy Library

Your Child's IEP: Practical and Legal Guidance for Parents

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INTRODUCTION

If you are like many parents, when you receive a telephone call or letter inviting you to an IEP meeting, you respond with anxiety. Few parents look forward to attending IEP meetings. You may feel anxious, confused and inadequate at school meetings. What is your role? What do you have to offer? What should you do? Say? Not do?

Because they are not educators, most parents don't understand that they have a unique role to play in the IEP process.

Parents are the experts on their child.

Think about it. You spend hours every week in the company of your child. You make casual observations about your child in hundreds of different situations. You are emotionally connected to and attuned to your child. You notice small but important changes in your child's behavior and emotions that may be overlooked by others. You have very specialized knowledge about your child. This also helps to explain why your perspective about your child may be quite different from that of the educators who only observe your child in the school setting.

Why do parents feel so anxious, inadequate and intimidated in school meetings? Most parents seem to believe that because they are not "trained educators"—and don't speak "education jargon"—they have little of value to contribute to discussions about their child's education.

The "Parental Role"

Perhaps we can explain "parental role" more clearly if we change the facts to illustrate our

point.

Think back to the last time your child was sick and you saw a doctor for medical treatment. You provided the doctor or nurse with information about the child's symptoms and general health. They asked you for your observations—because you are more familiar with your child.

Good health care providers elicit this kind of information from parents. They do not assume that unless parents have medical training, they have little of value to offer! When health care professionals diagnose and treat children, they gather information from different sources. Observations of the child are an important source of information. The doctor's own medical observations and lab tests are added to the information you provide from your own personal observations.

Do you need to be medically trained before you have any valid or important information to offer the doctor about your child's health? Of course not.

Decision-Making: Medical v. Educational

To diagnose a child's problem and develop a good treatment plan, doctors need more than subjective observations. Regardless of their skill and experience, in most cases doctors need objective information about the child. Information from diagnostic tests provides them with objective information. When medical specialists confront a problem, they gather information—information from observations by themselves and others and from objective testing.

Special education decision-making is similar to medical decision-making. The principles are the same. Sound educational decision-making includes observations by people who know the child well and objective information from various tests and assessments.

In both medical and educational situations, a child is having problems that must be correctly identified. The Individualized Education Plan (IEP) is similar to a medical treatment plan. The IEP includes information about the child's present levels of performance on various tests and measures. The IEP also includes information about goals and objectives for the child, specifically how educational problems will be addressed. The IEP should also include ways for parents and educators to measure the child's progress toward the goals and objectives.

How to Evaluate Progress

Now, think back to that last time your child was sick and needed medical attention. You left the doctor's office with some sort of plan—and an appointment to return for a follow-up visit. When you returned for the follow-up visit, you were asked more questions about how your child was doing—again, you were asked about your observations. This information helped the doctor decide whether or not your child was responding appropriately to treatment. If you advised that your child was not responding to the treatment and continued to have problems, then the doctor knew that more diagnostic work was needed and that the treatment plan may need to be changed.

Special education situations are similar to medical situations - except that these decisions are made by a group of people called the IEP Team or IEP Committee. As the parent, you are a member of the IEP team. Before the IEP Team can develop an appropriate plan (IEP) for your child, the child's problems must be accurately identified and described.

To make an accurate diagnosis, the IEP team will need to gather information from many sources. This information will include subjective observations of the child in various environments - including the home environment and the classroom. The information should also include objective testing. Objective testing needs to be done to measure the extent of the child's problems and provide benchmarks to measure progress or lack of progress over time.

If your child receives special education services, you know that a new educational plan or IEP must be developed for your child at least once a year. Why is this?

Children grow and change rapidly. Their educational needs also change rapidly. In many cases, the IEP needs to be revised more often than once a year. Parents and educators can ask for a meeting to revise the IEP more often than once a year—and new IEPs can be developed as often as necessary.

The child's educational plan, i.e. the IEP, should always include information from objective testing and information provided by people—including the parents and teachers—who observe the child frequently.

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WHAT SHOULD BE IN MY CHILD'S IEP?

The IEP should accurately describe your child's learning problems and how these problems are going to be dealt with.

Present Levels of Educational Performance

One of the best and clearest ways to describe your child's unique problems is to include information from the evaluations. The IEP document should contain a statement of the child's present levels of educational performance. If your child has reading problems, the IEP should include reading subtest scores. If your child has problems in math calculation, the IEP should include the math calculation subtest scores. To help you understand what these scores mean, you should read our article "Understanding Tests and Measurements."

Goals and Objectives

The IEP should also include a statement of measurable annual goals, including benchmarks and short-term objectives. The goals and objectives should be related to your child's needs that result from the disability and should enable your child to be involved in and progress in the general curriculum. The goals and objectives should meet other educational needs that result from your child's disability.

The IEP goals should focus on reducing or eliminating the child's problems. The short term objectives should provide you and the teacher with ways to measure educational progress. Are reading decoding skills being mastered? How do you know this? An IEP should include ways for you and the teacher to objectively measure your child's progress or lack of progress (regression) in the special education program.

In our work, we see many IEPs that are not appropriate. These IEPs do not include goals and objectives that are relevant to the child's educational problems. In one of our cases, the IEP for a dyslexic child with severe problems in reading and writing, included goals to improve his "higher level thinking skills," his "map reading skills" and his "assertiveness"—but no goals to improve his reading and written language skills. This is a common problem—IEP goals that sound good but don't address the child's real problems in reading, writing or arithmetic.

If you take your child to the doctor for a bad cough, you want the cough treated. You won't have much confidence in a doctor who ignores the cough—and gives you a prescription for ulcer medicine!

Measuring Progress: Subjective Observations or Objective Testing?

Let's return to our medical example. Your son John complained that his throat was sore. You see that his throat is red. His skin is hot to the touch. He is sleepy and lethargic. These are your observations.

Based on concerns raised by your subjective observations, you take John to the doctor. After the examination, the doctor will add subjective observations to yours. Objective testing will be done. When John's temperature is measured, it is 104. Preliminary lab work shows that John has an elevated white count. A strep test is positive. These objective tests suggest that John has an infection.

Based on information from subjective observations and objective tests, the doctor develops a treatment plan—including a course of antibiotics. Later, you and John return—and you share your ongoing observations with the doctor. John's temperature returned to normal a few days ago. His throat appears normal. These are your subjective observations.

Subjective observations provide valuable information—but in many cases, they will not provide sufficient evidence that John's infection is gone. After John's doctor makes additional observations—she may order additional objective testing. Why?

You cannot see disease-causing bacteria. To test for the presence of bacteria, you must do objective testing. Unless you get objective testing, you cannot know if John's infection has dissipated.

By the same token, you will not always know that your child is acquiring skills in reading, writing or arithmetic—unless you get objective testing of these skills.

How will you know if the IEP plan is working? Should you rely on your subjective observations? The teacher's subjective observations? Or should you get additional

information from objective testing?

Is Your Child "Really Making Progress?"

We have worked with hundreds of families who were assured that their child was "really making progress." Although the parents did not see evidence of this "progress," they placed their trust in the teachers. After their child was evaluated, these parents were horrified to learn that their suspicions were correct—and the professional educators were wrong.

In one of our cases, Jay, an eight year old boy with average intelligence, received special education services for two years -- through all of kindergarten and first grade. Jay's parents felt that he was not learning how to read and write like other children his age. The regular education and special education teachers repeatedly assured the parents that Jay was "really making progress." The principal also told the parents that Jay was "really making progress."

After he completed first grade, the parents had Jay tested by a private sector diagnostician. The results of the private testing? Jay's abilities were in the average to above average range. His skills in Reading and Written Language were at the early to mid-Kindergarten level. After two years of special education, Jay had not learned to read or write.

When teachers tell you that your child is "making progress," that teacher is giving you an opinion based on subjective observations. As you just saw in Jay's case, opinions and subjective observations may not give you accurate information.

If you have questions or concerns about whether your child is really making progress, you need to get objective testing of the academic skills areas—reading, writing, arithmetic and spelling. After you get the results of objective testing, you will know whether or not your child is really making progress toward the goals in the IEP.

The IEP: The "Centerpiece" of Special Education Law

The IEP has been called the "centerpiece" of the special education law. As you read through this article, you will learn more about the law—and the rights that insure that all children who need special education receive appropriate services. You will read about cases that have been decided around the country. Each of these cases is having an impact on the special education system today—improving the quality of special education services for all handicapped children—including your child.

After you learn about the law, regulations and cases, you will know how to write an IEP. If the IEP is written properly, you will be able to measure your child's progress.

We said this earlier—and it bears repeating. If you measure your child's progress—using objective measures—you will know whether your child is actually learning and benefiting from the program. If objective testing shows that your child is not learning and progressing as expected, then you know that the educational plan is not appropriate and your child is regressing.

If your child is not learning and making progress—with progress measured objectively—the IEP should be revised. (For more information about revising the IEP if child does not make

progress, see Appendix A of the Regulations).

Read our companion article: [Understanding Tests and Measurements for the Parent and Advocate](#). When you master the information in these articles, you'll be on your way to developing good IEPs for your child.

Law and Regulations

The IDEA statute was amended in June, 1997. When the Individuals with Disabilities Education Act (IDEA) was amended, changes were made in the section about "Individualized Educational Programs." The new federal regulations were issued in March, 1999. You will find helpful information about IEPs in the Code of Federal Regulations (CFR) and Appendix A of the Regulations.

(NOTE: The IDEA statute, regulations and Appendix A are in [Wrightslaw: Special Education Law](#). The Regulations and Appendix A are also on the Wrightslaw site. The Regulations page is at

http://www.wrightslaw.com/law/code_regs/Index_IDEA_Regs_990313.htm

Legal Decisions

To help educate you about IEPs and what they should include, we are including information from actual cases. Each case was selected to illustrate specific points about IEPs. After you read this section, you will have a clear understanding about the law and IEPs.

Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley 458 U. S. 176 (1982)

In 1982, the United States Supreme Court issued its first special education decision in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U. S. 176 (1982).

When the Supreme Court heard her case, Amy Rowley was a first grade child who was also deaf. Before Amy entered first grade, her parents asked that Amy be provided with a sign language interpreter. Although Amy could lip read, the parents asserted that an interpreter would enhance her ability to learn.

The Supreme Court decided that Amy did not need a full- time sign language interpreter at that time. They wrote that Amy was "a remarkably well-adjusted child" who performed "better than the average child in her class and is advancing easily from grade to grade." Although Amy was not performing as well as she would if not for her handicap, the Court concluded that the law did not require public schools to furnish "every special service necessary to maximize each handicapped child's potential."

Public schools often use the *Rowley* decision to justify their refusal to provide children with a program that does more than permit "grade to grade" advancement. All too often, schools lower expectations for special education children, "dummy down" the curriculum, and "socially promote" the children. Then, they assert that because the child is progressing from grade to grade, this proves that the child does not need more intensive services, including remediation in reading, writing and arithmetic.

"Educational Benefit"—How Much Is Enough?

In *Rowley*, the Supreme Court wrote that the child's individualized educational program (IEP) should be "reasonably calculated" to enable the child to receive "educational benefit." Since the *Rowley* decision was issued in 1982, parents and school officials have often disagreed about "educational benefit"—and how much educational benefit is "enough." Courts have found that because children with disabilities have "unique" needs, decisions about "how much is enough" must be made on a case by case basis. As noted in the U.S. District Court's opinion, (483 F. Supp 536. (S.D. NY 1980)) Amy Rowley's standardized test scores were at the 70th to 80th percentile ranks in comparison to her peer group. Average is at the 50th percentile rank. On the testing, she scored two to four grade levels above her peers.

Sometimes, disagreements about educational benefit are called "Cadillac-Chevrolet" disputes. Remember: In *Rowley*, the Supreme Court ruled that children are entitled to an **appropriate education** (i.e. a Chevrolet), not the best education money can buy (a Cadillac). One Ohio Hearing Officer wrote that the child was entitled to a Chevrolet—and the school district gave him a lemon! (*Fayetteville-Perry Sch. District*, 20 IDELR 1289 (SEA OH 1994))

Hall v. Vance County Bd. of Education

In 1983, a landmark decision was issued in North Carolina. Later, this decision was affirmed by the Fourth Circuit.

In *Hall v. Vance County Bd. of Education*, (1983-1984 EHLR DEC. 555:437 (E.D. NC 1983), affirmed at 774 F.2d 629, (4th. Cir. 1985)) Judge Dupree described the situation faced by young James Hall:

James A. Hall, IV is suffering from a severe learning disability known as dyslexia, a neurological disorder which manifests itself as a reading disability where the reader can neither decipher nor comprehend the symbols on a written page. There is presently no cure for dyslexia, rather, the reader must learn to cope with the disability and to develop alternate methods of unscrambling the symbols.

Beginning at the kindergarten level, James attended public school in Vance County, North Carolina for six years.

From the beginning, James had academic problems. The school district evaluated him and they found that although he had good intellectual ability, his reading skills were very poor. There was a big gap between James' ability and his reading skills. The school district

offered an IEP that provided James with 30 minutes of small group instruction twice a week.

Think back to our discussion of educational benefit. What do **you** think of this plan—to provide James with tutoring in a small group twice a week for 30 minutes? Will this provide James with educational benefit from which he could truly learn how to read?

In his decision, Judge Dupree wrote that although James received special education in his public school (the small group instruction twice a week), his academic problems did not improve—and he developed more problems. In his decision, the judge discussed these problems:

He was not only developing a "school phobia" characterized by frequent absences, but also was not mastering basic competency skills such as identifying which restroom was for "gentlemen" or "ladies" or the ability to go to the store to make small purchases at his mother's request.

In May, 1980, the end of James' fourth grade year, James was again administered a battery of tests. The scores of this test compare with the December, 1978 test as follows:

	2/1/78	5/12/80
Math	4.0	5.7
Reading Recognition	2.6	2.6
Reading Comp	2.2	2.7
Spelling	2.5	3.2
General Info	5.3	7.0
Total Test	3.4	3.9

Thus in three semesters of work under the IEP James had little or no grade improvement in his primary area of deficiency and had yet to improve over one-half a year total. However, during this time, he was promoted from the third grade to the fourth grade and then from the fourth grade to the fifth grade.

With the new results at hand, a new IEP was developed which employed similar procedures followed the past three semesters. At this stage James had been subjected to at least three sets of tests over several years all of which indicated that he had a high overall intelligence with good mathematical skills, yet was unable to read. With James still unable to read past the second grade level though promoted to the fifth grade with virtually the identical IEP which had been employed over the past three semesters, the parents, approaching desperation, decided to enroll James in a private school for the 1980-81 school year.

Use Objective Tests to Measure Educational Benefit

STOP: Re-read the above paragraphs again!

These paragraphs are taken from the decision in James' case. You can see that Judge Dupree

used information from educational achievement tests to measure educational benefit. He compared James' scores on the December 1, 1978 test and the scores on the May 12, 1980 test after eighteen months of special education. Comparing the test scores, the judge concluded that:

. . . in three semesters of work under the IEP James had little or no grade improvement in his primary area of deficiency and had yet to improve over one-half a year total.

James' scores on educational achievement tests provided Judge Dupree with proof that James made little progress in the public school program—although he "passed." In fact, although James was passed from the third grade to the fourth grade and on to the fifth grade, his reading skills remained at the second grade level. Passing from grade to grade did not mean that James Hall had learned how to read.

In despair, James' parents withdrew him from the public school program and enrolled him in Oakland School. Oakland is a small special education school in Virginia that specializes in providing educational remediation to children like James—children who have learning disabilities. After James attended Oakland for a few months, he was re-tested. The new testing showed that his reading and spelling skills had increased by more than one grade level.

Judge Dupree awarded reimbursement to James' parents for his education at Oakland. He found that the IEPs developed by Vance County did not provide James with an appropriate education—an education from which the child benefited. He also decided that James was receiving an appropriate education at Oakland School. What facts supported Judge Dupree's decision?

After James enrolled at Oakland, his educational program changed. New educational testing a few months later showed that James was learning how to read. He made more than one year of progress after just a few months. Judge Dupree cited the new educational scores in his decision—James was receiving an appropriate education at Oakland School.

If your child receives special education, then your child should have been tested with educational achievement tests. Have you obtained a complete copy of your child's file? Do you have all of the actual test scores and the written narrative that explains the scores? If you have the actual test scores, then you can do exactly what Judge Dupree did.

First, you need to make a list of all the different tests done on your child (most tests are made up of several subtests). Using a highlighter, mark any of the tests or subtests that have been given more than once. Some of the commonly administered educational achievement tests are the Woodcock-Johnson, the Kaufman (KTEA), the Wechsler Individual Achievement Test (WIAT) and the Wide Range Achievement Tests (WRAT). The Wechsler Intelligence Scale for Children, Third Edition (WISC-III) is the most commonly given intelligence test.

Next, make a list of repeated tests—any tests or subtests that have been given more than once. You will be charting out subtests that are the same or similar—tests of reading decoding skills or reading comprehension skills, math calculation skills, and so forth.

You need to understand that subtests or composite scores do not necessarily measure what they seem to measure. For example, the reading score on the Wide Range Achievement Test actually measures the child's ability to recognize and pronounce individual words out of context. Many refer to it as a "word recognition" test.

On the Woodcock-Johnson achievement tests, the reading measures may actually measure the child's ability to identify specific letters and words and fill in the blanks on words that may be missing from a paragraph. A score reported as "passage comprehension" may actually measure the child's ability to intelligently "guess" what the passage of text is about by recognizing some of the words in the passage. The child may not be able to read many of these words.

In the Gray Oral Reading Test, the child reads a paragraph out loud. The evaluator assesses the rate, accuracy and comprehension. This provides a more accurate, meaningful assessment of the child's actual reading abilities. It is important that you understand what tests are administered and what the tests truly measure.

Next, you need to chart out progress—using the repeated subtest scores. After you chart out your child's educational scores, you will have a much clearer idea as to whether or not your child is benefiting from the special education program—and whether the IEP is providing an appropriate education.

Burlington v. Dept. of Educ. for the Commonwealth of Mass.

In 1985, the Supreme Court issued a ruling in a special education case that originated in Massachusetts. *Burlington* (471 U.S. 359 (1985)) was the second important special education case heard by the Supreme Court. In *Burlington*, the Supreme Court decision addressed IEPs and what IEPs should include:

The free appropriate public education (FAPE) mandated by the Individuals with Disabilities Education Act (IDEA) is designed for the specific needs of the child through the Individualized Educational Program (IEP) which is "a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs."

Case law supports our position that an adequate IEP is essential. But what is "adequate?" How much "benefit" is enough? Let's take a look at some more case law.

Is the IEP "Adequate?"

In 1985, a Federal Judge in New York found that an IEP was adequate because:

. . . specific goals to which Glen's grade level are to be raised are listed in all areas of reading, verbal skill and math. *Romeo v. Ambach*, 1984-1985 EHLR DEC. 556:488 (E.D. NY 1985).

Parents take note: In this case, the objective tests were changes in the child's grade equivalent scores. The judge in James Hall's case also used grade equivalent scores.

Is the IEP "Sufficient?"

In 1988, the Idaho Supreme Court found that the Boise school system had not offered or provided a free, appropriate education (FAPE) because they did not develop an IEP that was "sufficient." The IEP was not "sufficient" because it did not specify the criteria and evaluation procedures that would be used to determine whether the IEP goals were being met. The Idaho Court noted that:

Above all else, Congress recognized that handicapped children are unique and that placement decisions must be made on an individual basis, by a multidisciplinary team, according to a variety of criteria ". . . The importance of the IEP cannot be understated. It is the decision making document. (*Thornock v. Boise Independent School District #1*, ___ Idaho Sup. Ct. ___, 767 P. 2d 1241, 1987-1988 EHLR DEC. 559:486 (1988)).

The Court found that the two IEPs proposed by the school district were not sufficient because they did not include ". . . goals, objectives and appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether 'instructional objectives are being achieved' as required by 20 U.S.C. Sec. 1401(19) . . . Because of the flaws in Gabriel's IEPs, the districts' failure to acknowledge the deficiencies of the IEPs it promulgated . . . we affirm the decision of the district court . . . Without a valid IEP, there can be no FAPE, see 20 U. S. C. Sec. 1401 (18), and therefore 34 C. F. R. Sec. 300.403(a) indicates that (private school tuition) reimbursement is appropriate."

Subjective Teacher Observations

In 1985, New Jersey District Court Judge Sarokin reversed the decisions of two Administrative Law Judges in a case that involved a hearing impaired child. He found that the school district's evaluations of Alisa fell "woefully short" because they relied on subjective "teacher observations," not objective or "scientific" test data:

They were based almost solely upon observation . . . assessment consisted of primarily non-standardized tasks and procedures . . . no scientific test results seem to have been considered . . . Thus, but one procedure - teacher evaluation - was utilized. Such procedures lacked scientific validity, in that they were not systematic, were limited to a narrow range of behavior and were not confirmed by recent test data, and thus tended toward discriminatory evaluation, i.e., evaluation that is biased, in this case against deaf children . . . The Court finds that this method of assessment does not meet the requirements of the EAHCA, or its regulations. (*Bonadonna v. Cooperman*, 619 F. Supp. 975, 1985-1986 EHLR DEC. 557:178, 183 (D. NJ 1985)).

How Should Educational Progress Be Measured?

In our work with parents and children, we have seen hundreds of IEPs that define "progress" by subjective teacher observations, not objective testing of the child's skills. As you saw in Jay's case, serious problems often come about when educational decisions are made on the basis of subjective observations. These problems have grave consequences for the child.

In 1989, the New Jersey Supreme Court awarded tuition reimbursement to parents of a child

who had dyslexia. (see *Lascari v. Board of Education of the Ramapo Indian Hills Regional High School District*, 560 A.2d. 1180, EHLR 441:565, (NJ 1989)) . This is what the Court had to say about the public school IEP:

As previously indicated, the purpose of the IEP is to guide teachers and to insure that the child receives the necessary education. (See 34 C.F.R. § 300.346) . . .

Without an adequately drafted IEP, it would be difficult, if not impossible, to measure a child's progress, a measurement that is necessary to determine changes to be made in the next IEP. Furthermore, an IEP that is incapable of review denies parents the opportunity to help shape their child's education and hinders their ability to assure that their child will receive the education to which he or she is entitled.

Consequently, the shortcomings that rendered John's program incapable of review also rendered it inappropriate . . . [Quoting the classification officer] 'Equally unclear is how any goals or progress was to be measured or decided.' The officer continued: "All teacher remarks are found to be subjectively based . . . [T]he goals and objectives of the IEP for 1980-81 and the proposed plan for 1981-82 are so vague that they were meaningless."

In 1990, a federal court in Alabama court struck down another public school IEP. Why? The Judge wrote:

Like Cory's previous IEP's, the new plan included only broad, generic objectives and vague methods for monitoring Cory's progress.

(Reference to footnote 14, as follows) For example, the first objective in Cory's new IEP, provided, in standard form: "The student will maintain a/an ___% average in math on the 3rd grade level," with "80" written in the blank space, and stated that Cory would be evaluated by reference to his "Daily work" and "Chapter tests." (*Chris D. and Cory M. v. Montgomery County Board of Education*, 753 F. Supp. 922, 17 IDELR 267, 269, 273 (M.D. Ala. 1990))

A few months later, a Nebraska District Court upheld a public school IEP because the IEP did contain appropriate goals and objectives. (*French v. Omaha Public Schools*, 766 F. Supp. 765, 17 EHLR 811, (D. Neb. 1991))

This Nebraska case analyzes IEP goals and objectives in accordance with Appendix C. The Court noted that the IEP included very specific test data, including percentile ranks and grade equivalent scores to describe the child's present levels of performance.

In 1993, a three judge panel in Pennsylvania reviewed a child's IEP and found that:

The IEP did not meet substantive requirements because, even if it conferred some educational benefit for Hope . . . it was not individualized to meet her social and emotional needs.

The Appeals Panel listed the factors that Hope's IEP lacked—including present levels of functioning, individualized behavior modification plan, objective criteria, assessment procedures or timeliness to determine when goals were achieved, annual goals written for

Hope rather than general ones written for all students in the class, and related services to address Hope's social and emotional needs.

The IEP was written in a general fashion for students attending LD classes and did not address Hope's individual disability. (*Big Beaver Falls Area School District v. Jackson*, ___ Pa. ___, 615 A. 2d 910, 19 IDELR 371, 373 (Pa. Commw. 1993))

Shannon Carter v. Florence County School District Four

In 1991, a federal judge in South Carolina issued his decision in Shannon Carter's case. In his decision, ([*Shannon Carter v. Florence County School District Four*](#), 17 EHLR 452 (D. Ct. SC 1991)). Judge Houck wrote that:

This evaluation [of Shannon] indicates a serious learning disability, with a variance between Shannon's verbal IQ and performance IQ of 36 points. Various subtests administered . . . yielded reading ability levels from 4.7 grade level equivalency to a 6.8 level. (at 453)

Shannon suffers from a serious and significant learning disability . . . Shannon's learning disability is on the severe end of the scale. According to Shannon's parents and Dr. Grant, Shannon also suffered from significant emotional overlay manifested by depression, feelings of low self worth and self-esteem. Shannon entered Trident Academy in the fall term of 1985 as a functional illiterate. (at 453)

How did Shannon's case begin?

First, the school district refused to provide Shannon with any help—they insisted that Shannon was lazy and unmotivated and that she was "choosing" not to read. After constant pressure from her parents and private sector experts, Florence County finally proposed an IEP for Shannon that would increase her reading from a 5.4 level to a 5.8 level and her mathematics from a 6.4 level to a 6.8 level—in one year. At that time, Shannon was about to enter 10th grade.

In his ruling for Shannon and her parents, Judge Houck wrote that this IEP was not appropriate for Shannon:

Even if all of the goals of the document had been met, Shannon would continue to fall behind her classmates at an alarming rate . . . progress of only four months in her reading and math skills over an entire school year ensured the program's inadequacy from its inception.

There appears no doubt, then, that the Carters were entitled to withdraw their child from the public school because of its failure to provide a FAPE. (at 455)

The school district appealed the District Court decision to the United States Court of Appeals for the Fourth Circuit. After the school district lost, they appealed to the United States Supreme Court. In a unanimous decision issued just thirty-four days after oral argument, the Supreme Court affirmed the lower court rulings and ordered that Shannon's parents be reimbursed for her private school education at Trident Academy.

Alex Gerstmyer v. Howard County Public Schools

After the Supreme Court issued the decision in Carter, an interesting case arose in Columbia, Maryland. This case involved Alex Gerstmyer, a 6 year old child who also had dyslexia. Although Alex had "red flag" problems in Kindergarten, the staff at Alex's school waited before testing him—they thought that he might "grow out of his problems."

When Alex began first grade, he had still not been evaluated. There was no IEP in place for him. Alex quickly realized that he was different from the other children—he was not learning how to read. At home, he was distraught and said that he was "stupid." His alarmed parents had him evaluated by a private sector psychologist—this testing confirmed that Alex had dyslexia.

Later in the Fall, the public school did propose an IEP. The parents felt that the IEP was vague and did not provide Alex with the help he needed to overcome his dyslexia. Alex was becoming more upset by the day—saying that he was stupid and didn't want to live. Presented with an inadequate IEP for their son, his parents removed him from the public school program and placed him into a Montessori school (non- special education school) and asked for tuition assistance. ([*Gerstmyer v. Howard County Public Schools*](#), 850 F. Supp. 361, 20 IDELR 1327 (D. MD 1994))

In his decision, Judge Motz described the public school IEP as ". . . nothing more than a collection of forms prepared for other students stating only general goals and not at all tailored to Alex's special needs."

Because the IEP was not tailored to Alex's unique needs as a child with dyslexia, Judge Motz awarded Alex' parents reimbursement for their son's education at the Montessori school.

Evans v. Board of Educ. of Rhinebeck Cent. Sch. Dist.

An excellent and frequently quoted case about IEPs comes from New York — and involves another child with dyslexia.

In [*Evans v. Board of Educ. of Rhinebeck Cent. Sch. Dist.*](#), 930 F. Supp. 83, 24 IDELR 338, (S.D. N.Y. 1996), Judge Parker overturned earlier administrative rulings and awarded Frank's parent with reimbursement for his tuition at The Kildonan School. In his decision, Judge Parker discussed dyslexia and the educational techniques used to treat this condition. Quoting Appendix C of the Code of Federal Regulations, he discussed the problems of vague IEPs where the child's progress cannot be measured objectively:

[The IEP] . . . wholly failed to identify his particular areas of deficit and was based on information that was at least ten months old, I still find that the IEPs did not adequately set forth strategies for evaluating progress, in violation of 20 U.S.C. § 1401(a)(19) and 34 C.F.R. § 300.346(a)(2). The Act's requirement of periodic and individualized assessments of each handicapped child evinces a recognition that children develop quickly and that a placement decision that may have been appropriate a year ago may no longer be

appropriate today.

Appendix C defines "short term instructional objectives" as "measurable, intermediate steps between a handicapped child's present level of educational performance and the annual goals that are established for the child." The objectives are to "serve as milestones for measuring progress toward meeting the [annual] goals." They "provide a mechanism for determining . . . whether the child is progressing in the special education program . . . and whether the placement and services are appropriate to the child's special learning needs. In effect, these requirements provide a way for the child's teacher(s) and parents to be able to track the child's progress in special education." 34 C.F.R. Chapter 3, Appendix C, question 37.

The IEPs include only broad, generic objectives and vague, subjective methods for monitoring Frank's progress. For example, the first goal in Frank's October 1994 IEP provided that he would be evaluated on the listed objectives by reference to "teacher observation" and "80% accuracy." With reference to the second goal, the October 1994 IEP provided that Frank would be evaluated by "teacher observation" and "80% success."

Although the IEP repeatedly incants these phrases—"teacher observation," "80% success"—because there is little indication of what Frank's level of success was when the IEP was written, it fails to specify strategies for adequately evaluating Frank's academic progress and determining which teaching methods are effective and which need to be revised . . . with regard to the June 1994 IEP, which used the same mantra to a large extent, that it did not set forth measurable criteria to assess progress. (at IDELR 345,346)

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PRACTICAL GUIDANCE FOR PARENTS

What do these cases mean to you—a typical, average parent—a parent who gets a knot in your stomach when you think about going to an IEP meeting?

First, you know that the IEP should include ways for you to measure your child's progress in special education—and that this progress should be measured objectively.

You saw that Judge Dupree charted out James Hall's educational achievement test scores to measure the boy's progress in the public school special education program. After he charted out James' scores, the judge realized that James' test scores had not improved much in his weak academic areas—especially reading.

James' failure to make progress—as shown by the educational achievement tests—proved that the public school program was not appropriate. After James transferred to Oakland School, his test scores rose. This improvement showed that James was receiving an appropriate education at Oakland School.

In Shannon Carter's case, Florence County proposed an IEP where, after a full year of special education, Shannon would make just four months of progress in reading and

mathematics. Judge Houck wrote that this goal was "wholly inadequate." The Fourth Circuit wrote that "a goal of four months' progress over a period of more than one year was rather modest for a student such as Shannon and was unlikely to permit her to advance from grade to grade with passing marks."

And in Frank Z.'s case, Judge Parker's decision shows that he was distressed to see that Frank's "progress" was being measured by subjective teacher observations.

School districts often propose IEPs where the child's progress is measured by subjective "teacher observation" and "teacher made tests." "Teacher observation" does not measure a child's progress adequately.

Skills like reading, writing and math can and should be measured by objective testing.

"You Can't Fail Special Ed!"

In many cases, kind, well-meaning teachers work hard to teach their students. Teachers may believe that your child is "really making progress" when this is not the case. You saw how this affected Jay. After two years of special education, Jay had not learned how to read or write. Yet, Jay's teachers sincerely believed that he was "really making progress."

Teacher assessments of a child's progress are subjective assessments by a person who has a strong personal and emotional interest in the outcome.

"My Child is Receiving Passing Grades"

Your child is receiving passing grades - or good grades. As a parent, can't you rely on grades to advise you about your child's progress?

In 1994, the Department of Education released the results of studies about grading practices in public schools. What did they learn?

The average grade in middle school English and Math is a "B." Most middle school children receive grades of "C" or higher in English and Math.

Grade inflation is a serious problem. Parents cannot assume that "passing grades" shows that their child is making real academic progress. You must see that your child's progress is measured objectively. When you compare the results of objective testing over time, you will know whether your child is making measurable progress toward his IEP goals.

Appendix A: A Powerful Tool for Parents

In March, 1999, Appendix A replaced Appendix C. Appendix A includes 40 Questions and Answers about IEPs. In Appendix A, you'll find answers to questions about what your child's IEP should include, how the IEP should be developed, when the IEP should be revised, and clarification of the parental role.

Let's take a look at some of the Questions from Appendix A.

What is the parent's role in the IEP process?

"The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP of their child. This role is an active role in which the parents

- (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child;
- (2) participate in discussions about the child's needs for special education and related services and supplementary aids and services; and
- (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. (**Question 5**)

What must be included in the IEP?

Present Levels of Educational Performance

"Section 300.347(a)(1) requires that the IEP for each child with a disability include: "a statement of the child's present levels of educational performance, including (i) how the child's disability affects the child's involvement and progress in the general curriculum . . ."

Measurable Annual Goals, Including Benchmarks or Short-Term Objectives

"As noted above, each annual goal must include either short-term objectives or benchmarks. The purpose of both s to enable a child's teacher(s), parents, and others . . . to gauge, at intermediate times during the year, how well the child is progressing toward achievement of the annual goal.

"The revised statute and regulations also provide that . . . IEP teams may develop benchmarks, which can be thought of as describing the amount of progress the child is expected to make within specified segments of the year . . . benchmarks establish expected performance levels that allow for regular checks of progress . . . " (Question 1)

Must the school inform parents about their child educational progress?

"Yes. [The law and regulations] include a number of provisions to help ensure that parents are . . . informed about their child's **educational progress** . . . "

"First, parents will be informed regarding their child's present levels of educational performance through the development of the IEP (Section 300.347(a)(1)

"Further, Sec. 300.347(a)(7) sets forth new requirements for regularly informing parents about their child's **educational progress**, as regularly as parents of nondisabled children are informed of their child's progress. This section requires that the IEP include:

A statement of --

- (i) How the child's **progress toward the annual goals will be measured**; and
- (ii) How the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress of --
 - (A) their child's **progress toward the annual goals**; and
 - (B) The extent to which that **progress is sufficient** to enable the child to achieve the goals by the end of the year."

"Finally, the parents, as part of the IEP team, will participate at least once every 12 months in a review of their child's **educational progress**. (Question 10)

The IEP Must Be Revised If Child Does Not Make "Expected Progress"

The school "must initiate and conduct meetings periodically, but at least once every twelve months, to review each child's IEP, in order to determine whether the annual goals are being achieved, and to revise the IEP, as appropriate, to address:

- (1) Any lack of expected progress toward the annual goals and in the general curriculum . . . (Question 20)

Appendix A

Appendix A is an important tool to use when developing a child's IEP. You can download Appendix A from the Wrightslaw site at

http://www.wrightslaw.com/law/code_regs/IDEARegs_AppendixA.htm

You can also get Appendix A and other resources at **The National Information Center for Children and Youth with Disabilities (NICHCY)**: <http://www.nichcy.org/>

Get a complete list of the special education publications from NICHCY.

How to Develop an IEP That Measures Your Child's Progress Objectively

You say—"I'm still confused. The IEPs that have been developed for my child don't include objective measures of progress. How can they be written differently? How will I know whether he is actually making progress?"

Change the facts. Assume that you have an 8 year old son named Mike. Mike is upset - he didn't pass the President's Physical Fitness Test. Mike tells you that he wants to pass the test next year. He asks you to help.

You learn that there are specific criteria that children must meet to pass the President's Physical Fitness Test. The children's performance on various activities is measured objectively. You check Mike's scores. Mike ran the 50 yard dash in the specified time,

completed 12 (out of an expected 25) sit-ups, and performed no pull-ups.

Now, you and Mike know what he will need to do to accomplish his goal and qualify for the President's Physical Fitness Award. You help him develop a training plan that includes short term objectives that focus on remedying his areas of weakness (i.e. sit-ups, pull-ups) while maintaining or improving his running ability.

When Mike takes the President's Physical Fitness Test, his performance on the various tests is measured objectively. His running speed over a specific distance is measured with a stopwatch. His ability to do the required sit-ups and pull-ups is measured by counting them. Because these measurements are objective, anyone who observes this testing will know if Mike meets the criteria for the Award.

Kevin and Keyboarding

Let's look at an IEP goal where progress toward the goal is measured subjectively and objectively.

Our IEP goal says that "Kevin will learn keyboarding [or typing] skills."

If Kevin's progress toward this goal is measured subjectively, his IEP may state that Kevin's progress toward learning keyboarding or typing will be determined by "Teacher Judgment" or "Teacher Observation" or "Teacher - made Tests" with a score of "80%" as the criteria for success.

If the IEP is written properly, measuring progress objectively, the IEP may say "By the end of the first semester, Kevin will touch-type a passage of text 15 words per minute with not more than 5 errors on a 5 minute test. By the end of this academic year, Kevin will touch type a passage of text for 5 minutes at 35 words per minute with not more than 5 errors."

Megan and Reading

Let's look at Megan who is having trouble learning to read. Megan is in the fifth grade. According to educational achievement tests, her reading decoding skills are at the beginning second grade level. Megan's parents request special education services to remediate their daughter's reading problems. How will her parents know if Megan is benefiting from the special education program?

If Megan is being appropriately educated, her test scores in reading will begin to improve as she goes through the process of remediation. An appropriately written IEP should indicate that after a year of remediation, Megan will make progress toward closing the gap between her ability and her problems in reading, and that her educational progress will be measured objectively with educational achievement tests.

The IEP may state that after a year of specialized instruction "Megan will be reading at the 4th grade level as measured by her scores on the Reading subtests of the Woodcock-Johnson Achievement Test." During the next year, Megan's IEP should include more goals in reading—with the ultimate goal of closing the gap between Megan's ability and her reading skills.

Parents can use percentile ranks in the IEPs, instead of grade equivalent scores.

Let's assume that Megan's reading test scores show that she is reading at the bottom 10th percentile, when compared to other children her age. After a year of appropriate special education, Megan probably will not be reading at the 50th percentile level (i.e. the "average" level for children her age). An objective may state that after a year of special education, "Megan will be reading at the 25th percentile level" If Megan moves to the 25th percentile level in reading, she be making progress toward closing the gap.

Although Megan's reading skills are still below average, you see that she is making steady progress. Megan's progress in reading is being measured objectively with standardized tests. Her progress is reported with numbers that can be compared over time.

First Steps

List your child's weaknesses, i.e., writing, arithmetic, spelling, typing, etc. Next, list your child's present levels of performance in objective measurable terms. For example :

Present Levels: My child reads a passage of text orally at the XYZ grade equivalent level as measured by the Gray Oral Reading Test (GORT).

or

My child is reading a passage of text orally at the XYZ percent level as measured by the GORT.

These examples apply to all disabilities—learning disabilities, autism, speech language deficits, mental retardation, cerebral palsy. You need to know specifically where the child's deficits are, what skills are deficient, what behavior needs to be changed.

The starting point should be observable and measurable percentile ranks, grade equivalents, age equivalents or standard scores. Where should this skill be in one year later? Use objective measurable terms, not subjective terms.

Write down a goal that your child should achieve after one year of an appropriate special education. (Special education should be designed to remediate the child's weaknesses.)

Sample Goal

By May 15, [one year later], my child will be able to read a passage of text orally at the XYZ [insert the appropriate increased level here] grade equivalent level as measured by the GORT.

or

By May 15, [one year later], my child will be able to read a passage of text orally at the XYZ [insert the appropriate increased level here] percent level as measured by the GORT.

Now, you have an objective measurable starting point and ending point, using norm referenced data. How do you get from Point A to Point B?

Your map from Point A to Point B includes short term objectives and/or benchmarks. To learn more about appropriate goals, objectives and benchmarks, you need to read publications about your child's specific disability. As you become more knowledgeable, you'll learn how to write objectives and benchmarks that lead to the annual goal.

Your Child's IEP Should Measure Learning—Objectively

Learning is change. Changes in academic skills can be measured objectively. Your child's test scores are like a series of photographs—they show that the child is learning and acquiring new skills or knowledge.

Remember: Change can and should be measured objectively—whether the area being measured is physical fitness, strep throats—or educational progress.

Resources:

[Better IEPs: How to Develop Legally Correct and Educationally Useful IEPs](#) by Barbara Bateman and Mary Anne Linden (Sopris West)

[The Complete IEP Guide: How to Advocate for Your Special Ed Child](#) by Lawrence Siegal (Nolo Press)

[Preparing Instructional Objectives by Robert Mager](#)

[Measuring Instructional Results](#) by Robert Mager.

[Wrightslaw: Special Education Law](#) by Peter W. D. Wright and Pamela Darr Wright (Harbor House Law Press).

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