

**SPECIAL
POINTS OF
INTEREST:**

- Progress monitoring should be analyzed and used to make decisions and frame instruction for the student.
- Use information from a child's PBSP to report behaviors to families.
- Tuition reimbursement can be denied where parents fail to prove that the private school the student is attending is appropriate.
- Reports of short term issues several years prior to discipline does not make a student "thought to be eligible."

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Importance of Progress Monitoring

The IDEA requires all school districts that receive federal funding to provide a free, appropriate public education (FAPE) to students with disabilities who qualify for special education services.

In 2017 the United States Supreme Court reviewed the standard for FAPE in Endrew F. V. Douglas County School District and determined that to meet its substantive obligation

under the IDEA, a school must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. While Courts have continued to hold that the IDEA does not guarantee any level of success, this and other Court decisions continue to emphasize the importance of progress monitoring to ensure that the child is receiving

a free, appropriate public education.

However, progress monitoring is not just collecting and reporting data to the parents. Progress monitoring data should be reviewed and analyzed by the team to make decisions and to frame instruction for the student.

This article will focus on the importance of appropriately using progress monitoring information

[Read More about Progress Monitoring on page 3](#)

Reporting Behavior To Parents

Children with behavioral issues can be challenging and teachers need to report to parents the behavioral concerns that their child is exhibiting in school. However, just reporting negative behaviors to families can become overwhelming and frustrating to the parents. Parents want to know more than just that their child exhibiting behaviors. They want to know why the behavior occurred and how the child responded to current behavior support. Consider these tips to communicate effectively.

[Consider These Tips To Effectively Communicate Behavior on page 5](#)

CASE LAW UPDATE

Anthony B. V. Colonial School District

3rd Circuit Court of Appeals

Tuition Reimbursement

Issue: Parents sought tuition reimbursement from the District claiming that their child was denied FAPE due to the District's failure to appropriately evaluate their child and failed to identify the child as eligible for special education.

Facts: Anthony enrolled in the District in 5th grade after previously attending parochial school. The District conducted an evaluation in 8th grade. Despite reports from almost all of his teachers that he was struggling academically and clinically significant rating on some areas of the behavior rating scales, the District concluded that Anthony did not have a disability and did not qualify for special education services.

The parents withdrew Anthony at the end of 8th grade and placed him in a private school for 9th and 10th grades. Anthony wanted to reenroll in the District for 11th grade. As part of that process, parents requested another evaluation over the summer. However, parents ultimately decided that Anthony would remain in the private school to start 11th grade.

The District concluded the evaluation. Although math scores were discrepant, the evaluation concluded that Anthony had a learning disability in reading and qualified him for special education services. The proposed IEP contained one goal for reading comprehension and SDI for reading fluency and organization. It did not contain a goal or SDI in math. Parents disagreed with the proposed IEP and Anthony continued to attend his private placement.

Prior to 12th grade, the family notified the District that they would be seeking tuition reimbursement and payment of tuition for 12th grade.

Tuition Reimbursement: Parents are permitted to seek tuition reimbursement as a remedy under the IDEA if the school district has failed to provide or offer FAPE to a child with a disability. In order to obtain tuition reimbursement, a 3 prong test must be met:

1. The district must fail to offer or provide the child with FAPE;
2. If the District failed to provide or offer FAPE, the private placement selected by the parents must be appropriate; and
3. A balancing of the equities occurs to determine if anything impacts the claim.



Analysis: In this case, the Hearing Officer's determination that the District failed to offer Anthony FAPE was upheld by the Court. The Hearing Officer found that the first evaluation did support a conclusion that the student's significant learning challenges were based on a disability and found that Anthony should have qualified under the IDEA or at least Section 504. The second evaluation failed to identify the child with a specific learning disability in math. As a result, the IEP failed to provide services in math to the student, thereby denying him FAPE.

However, looking at the second prong of the analysis, the hearing officer found, and the appellate courts agreed, that parents failed to meet their burden that the private placement was appropriate. They failed to provide any evidence of the services provided to the student in the private placement that met the student's needs.

Therefore, although the District failed to provide or offer Anthony with FAPE, tuition reimbursement was denied because parents failed to prove that the private placement he attended met his needs and was appropriate.

Progress Monitoring

(Continued from page 1)

What Should We Be Monitoring

Progress monitoring should be directly related to the goals in the IEP. Use the baseline data information to report how far the student has come from baseline. Include the accommodations and modifications that have been provided to the student to obtain the progress.

What Should The Data Look Like

When possible, objective, rather than subjective data should be used. Being able to graph progress is much more powerful than a subjective statement that the student “is progressing.” Be sure that the way that the data is reported each quarter or school year is consistent.

What is Progress Monitoring Used For

First, we should use the information to establish the baseline for the goal. Last year’s data should be used to show where the goal for the current year’s IEP will start. This starting point is important to measure the progress that is being made.

The data collected for progress monitoring should be used to inform instruction. The data shows whether or not the student has made growth and benefited from the instruction that has been provided. If the student is progressing appropriately in light of their circumstances, then we know that the instruction that is being provided is working to ensure that the student receives FAPE.

What If Data Shows No Progress

It is important that data that does not show progress does not just get reported to parents then ignored. Teachers should analyze the information to determine if we can find a reason that the child did not benefit from instruction or make progress. It may just be that the teacher feels that the instruction is appropriate, but the student just needs more time to work on the skill to show progress. The teacher may also be able to use that data to modify their methodology of teaching the student.

However, other times, we may be able to pinpoint a reason for the lack of progress. For example, is attendance, behavior, medication changes, home issues, etc, impacting the child’s progress? Have a conversation with the parents to get input into the analysis.

Do we need to make any changes to the child’s program? Consider whether an IEP Team meeting should be held. Do not wait until the end of the year to meet to discuss a student’s lack of progress throughout the year. The IEP Team should analyze what changes need to be made to allow the child to benefit from instruction and make progress.

The Team should ask whether: the student needs more time receiving special education services; the child need increased supports in a regular education classroom; the child need different programming to address their needs; there are new needs that must be addressed or a behavior support plan would benefit the student.

WHAT DO YOU THINK?

A high school student in your district, who has never been identified as eligible for special education services, makes a threat in school. As you prepare for the expulsion hearing, parents raise that their child is “thought to be exceptional” and entitled to the IDEA’s disciplinary protections. They claim that in 5th grade, their child was anxious and did not want to attend school. They tell you that they notified the child’s 5th grade teachers about this and that the guidance counselor at the middle school saw him frequently to address these concerns. When you speak with the 5th grade teachers they recall a few times when the student was crying or upset, but say he was easily redirected and the parents reported that by the end of the year he was doing much better. Do you think that based on this the student should be considered “thought to be exceptional” and no discipline imposed?

Under the IDEA, a child who has not been identified as eligible for special education is only entitled to disciplinary protections for violations of the code of conduct if the District had “knowledge of a disability before the behavior that led to the discipline.” The District is deemed to have knowledge if:

1. the parent expressed concern in writing to the LEA that the child is in need of special education services;
2. the parent had previously requested an evaluation of the child; or
3. the teacher of the child, or other school personnel, expressed specific concerns about a pattern of behavior demonstrated by the child to the director of special education or to other supervisory personnel.

First, parents did not raise any of the 3 IDEA enumerated reasons that “knowledge” would attach to the District. The parents never requested an evaluation or expressed concern that they felt their child needed special education. The teachers did not express specific concern at any time that the child had a pattern of behaviors with which they were concerned.

Second, simply providing information to the school that their child was exhibiting difficulties for a short time frame several years prior to the disciplinary incident does not give the District reason to believe the child was a child with a disability that qualified for special education services.

As such, the child did not meet the criteria for “thought to be exceptional” and the District was entitled to impose discipline.



Communicating Behavior To Parents

	Details
Start at the IEP Meetings	<ul style="list-style-type: none"> • Set expectations • Determine the family’s preferred method of contact for you and for them • Set reasonable expectations for the frequency of communication • However, do not use statements that seem to limit communication or contact about concerns they have with their child or the school
Language used to communicate behaviors should be:	<ul style="list-style-type: none"> • Easily understandable to the parents • Professional • Objective rather than a subjective opinion about the child
Reports should be:	<ul style="list-style-type: none"> • Honest: provide an honest assessment of what is happening • Based on the child’s IEP and PBSP • As positive as possible—without sugar coating the situation.
Data Provided Should Be Based on Goals	<ul style="list-style-type: none"> • Do not just report that the behavior has occurred • Provide information—what was the antecedent that caused the behavior • Provide data—did the behavior decrease in length of time or severity in comparison to prior behaviors. For example, report that the behavior lasted 5 minutes which was a decrease of one minute from prior behavior
Report Supports Provided and How Child Responded	<ul style="list-style-type: none"> • Let the parents know what supports were provided to the student in response to the behavior • Use information based on the PBSP • Report how the student responded to the supports that were provided.
Report Next Steps if Behavior is Not Improving	<ul style="list-style-type: none"> • As with progress monitoring use the data to inform behavior supports • Report to parents what we will try in the future to address behaviors • Consider a new or updated FBA or revisions to the PBSP



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If you have a special education issue you would like to see addressed in subsequent issues of this newsletter, please write to or e-mail Trish Andrews at the above address.

Andrews & Price, LLP is the pre-eminent law firm in Western Pennsylvania in the practice of Public Sector Law. Our attorneys have more than 60 years of combined experience servicing School Districts. We provide a full range of legal services to our clients, including serving as Solicitor for various school districts, serving as special counsel for special education due process hearings, presenting seminars relating to the Reauthorization of IDEA and representing our clients in all types of litigation, including defense of numerous civil rights suits in federal and state Court.



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Tri-State Area School Study Council of the Administrative and Policy Studies Department of the School of Education of the University of Pittsburgh seeks ways to increase organizational capacity in schools through problem solving, technical service, and staff development so all students will be better prepared to make contributions to both our democratic society and the world community.

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Consult Your Solicitor!

The legal issues discussed herein are for the purpose of providing general knowledge and guidance in the area of special education. This newsletter should not be construed as legal advice and does not replace the need for legal counsel with respect to particular problems which arise in each district. As each child is unique, each legal problem is unique. Accordingly, when districts are faced with a particular legal problem, they should consult their solicitor or with special education counsel to work through the issues on a case by case basis.