



Fagen Friedman & Fulfroft LLP

All Things Considered



IEP Goals in a Post-Endrew F. World

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What We'll Consider . . .

- Legal Requirements for Appropriate and Measurable Annual Goals
- Post-Endrew F. Cases Addressing Issues Related to Development of IEP Goals

Palo Alto Unified School Dist.

Sacramento City Unified School Dist.

Riverside Unified School Dist.

Bellflower Unified School Dist.



I. Legal Requirements for Appropriate and Measurable Annual Goals



IEP Content Requirements

- Every IEP must include statement of measurable annual goals, including academic and functional goals, designed to:
 - Meet the needs of the student that result from the disability to enable the student to be involved in and make progress in general education curriculum; and
 - Meet each of the other educational needs of the student that result from the disability

(34 C.F.R. § 300.320 (a)(2); Ed. Code, § 56345, subd. (a)(2))



IEP Content Requirements

- Each IEP also must contain description of how student's progress toward meeting annual goals will be measured and when periodic reports on such progress will be provided
 - Includes progress toward meeting postsecondary transition planning goals

(34 C.F.R. § 300.320(a)(3); Ed. Code, § 56345, subd. (a)(3); Letter to Pugh (OSEP 2017) 69 IDELR 135)



IEP Content Requirements

- IEPs must “show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided”
 - To be measurable, goals must be based on accurate present levels of performance
 - OAH: “Appropriateness of placement can only be examined by looking to the implementation of goals”

(Cal. Code Regs., tit. 5, § 3040; Student v. Paso Robles Joint Unified School Dist. (OAH 2011); Student v. Los Angeles Unified School Dist. (OAH 2010))



USDOE Guidance

- Annual goals are statements that describe what student can reasonably be expected to accomplish within 12-month period
- IEP team must write IEP goals in way that allows for objective measurement of progress toward achieving those goals
- Annual IEP goals should be aligned with state academic content standards for grade in which student is enrolled

(Letter to Butler (OSERS 1988) 213 IDELR 118; 71 Fed. Reg. 46662 (Aug. 14, 2006);
Dear Colleague Letter (OSERS/OSEP 2015) 115 LRP 53903)



Number of Goals

- Law does not require that student's IEP include any particular number of goals, nor does it require a goal for every manifestation of student's disability
 - Rather, amount and type of goals that IEP team is required to provide depend on student's identified needs

(Student v. Bellflower Unified School Dist. (OAH 2014))



Goals and Services

- Each IEP goal should have corresponding items of instruction or services
 - Having goals without related programming indicates that district is not providing FAPE
- “Stranger test”:
 - Person in another district who is unfamiliar with student’s IEP would be able to implement goal, assess student’s progress on goal, and determine whether progress was satisfactory

(Sacramento City Unified Sch. Dist. v. R.H. (E.D. Cal. 2016) 68 IDELR 220; Mason City Community School Dist. (SEA IA 2006) 46 IDELR 148)



Review: Andrew F. FAPE Standard

- In order to meet their substantive obligation to provide FAPE under IDEA, districts must offer IEPs that are “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances”



Review: Andrew F. FAPE Standard

- “Rowley sheds light on what appropriate progress will look like in many cases: For a child fully integrated in the regular classroom, an IEP typically should be ‘reasonably calculated to enable the child to achieve passing marks and advance from grade to grade’”



Review: Andrew F. FAPE Standard

- But if education in the general classroom is not a reasonable possibility for a child, “the IEP need not aim for grade-level advancement”
- “Educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom”



M.C. v. Antelope Valley Union HSD

- Dispute over whether District developed measurable goals in all areas of need for high school Student with visual impairment
 - “The school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can make progress in the general education curriculum taking into account the progress of his nondisabled peers and the child’s potential”

(M.C. v. Antelope Valley Union High School Dist. (9th Cir. 2017) 852 F.3d 840)



K.M. v. Tehachapi USD

- Parents of Student with autism disputed District's IEPs because they believed the team did not develop specific goals to address Student's attention difficulties
- Court upheld ALJ's ruling in District's favor, recognizing that ALJ's decision preceded ruling in Endrew F.
 - Goals assisted Student in staying on task



K.M. v. Tehachapi USD

- “IDEA does not require that [goals] have a one-to-one correspondence with specific needs . . . so long as [they], as a whole, . . . enable progress appropriate in light of the student’s circumstances”
 - “The precise form that a goal takes is a question of educational policy, and courts should not substitute their own notions of sound educational policy for those of the school authorities which they review”

(K.M. v. Tehachapi Unified School Dist. (E.D. Cal. 2017) 69 IDELR 241)



USDOE on Endrew F. and Goals

- Essential for IEP team to meet frequently to review student's progress and revise goals when necessary
 - Parents and districts "should collaborate and partner" to track progress
- IEP teams must ensure that "goals are appropriately ambitious and that all children have the opportunity to meet challenging objectives"

(Questions and Answers on Endrew F. v. Douglas County School Dist. RE-1
(USDOE 2017) 71 IDELR 68)



II. Post-Andrew F. Cases Addressing Issues Related to Development of IEP Goals



Palo Alto USD (OAH 2018)

Facts

- Gifted high-schooler with OHI and speech language impairment; also diagnosed with autism and anxiety
- Student was successful at school
- Five IEP goals addressed anxiety, executive functioning/planning and coping strategies



Palo Alto USD (OAH 2018)

Facts (cont'd)

- Parent believed goals did not address all areas of need
 - Claimed Student should have had many more goals to address items that included bullying prevention, self-advocacy and social skills
- Parent also faulted District for carrying over several goals on which Student had progressed but had not yet met



Palo Alto USD (OAH 2018)

Issue

- Whether Student was denied FAPE because his IEP:
 - Contained goals that did not appropriately address his anxiety and executive functioning
 - Lacked goals for his other areas of need
 - Repeated goals from previous IEP



Palo Alto USD (OAH 2018)

Decision & Rationale

- ALJ ruled in favor of District
- Goals were measurable and appropriately addressed Student's anxiety, executive functioning and organizational needs
- Failure to include numerous additional goals suggested by Parent's experts did not impact Student's education



Palo Alto USD (OAH 2018)

Decision & Rationale (cont'd)

- IDEA “does not require that each identifiable need, deficit, or area of struggle or challenge be addressed in a separate goal”
- “Carrying over previous goals, by itself, does not mean the identified goals . . . failed to provide or deliver a meaningful educational benefit”

(Student v. Palo Alto Unified School Dist. (OAH 2018) Case No. 2017110106, 118 LRP 21969)



Palo Alto USD (OAH 2018)

Practical Compliance Keys



- Too many goals can complicate full implementation of student's IEP
- Districts are not required to include annual goals that relate to areas of general curriculum in which student's disability does not affect his or her performance



Palo Alto USD (OAH 2018)

Practical Compliance Keys



- Lesson from Endrew F. is not to repeat goals from previous IEPs without addressing “why”—as District successfully did in this case
- Often, however, repeating goals without adjusting criteria may not be acceptable because it does not allow student to make progress



Sacramento City USD (OAH 2018)

Facts

- Student with autism and OHI was homeschooled pursuant to settlement
- District conducted triennial assessment
 - Academic, psychoeducational, OT, functional behavioral
- IEP team developed numerous goals based on completed assessment reports
 - Reading comprehension, social communication, language and behavior



Sacramento City USD (OAH 2018)

Facts (cont'd)

- Parents expressed concern that assessments did not adequately explore Student's sensory processing needs and executive functioning deficits
- Refused to consent to IEP
- District filed for due process



Sacramento City USD (OAH 2018)

Issue

- Whether District's IEP offered FAPE, thereby entitling District to implement IEP without parental consent?



Sacramento City USD (OAH 2018)

Decision & Rationale

- ALJ ruled in favor of Parents
- District failed to adequately assess Student's executive functioning, sensory processing and behavior deficits to provide accurate present levels of performance on which to base goals



Sacramento City USD (OAH 2018)

Decision & Rationale (cont'd)

- No evaluation of executive functioning
 - Without such assessment, supports necessary to achieve goals were inadequate
- Additional sensory processing needs were not assessed or addressed by goals
- In-home FBA could not be used to create appropriate behavior goals for school

(Sacramento City Unified School Dist. v. Student (OAH 2018) Case No. 2017100702, 118 LRP 6999)



Sacramento City USD (OAH 2018)

Practical Compliance Keys



- Complete and accurate assessments are foundation for “connect the dots” approach; faulty assessments likely will result in faulty goals
- Baselines are starting point for each annual goal; they must be accurate and should relate specifically to goal(s)



Sacramento City USD (OAH 2018)

Practical Compliance Keys



- When crafting behavior goals, FBA will have little value if it does not reliably identify methods to address behaviors interfering with Student's classroom work
- Beware of relying on behavioral assessment conducted in home environment



Riverside USD (OAH 2018)

Facts

- High-school Student with OHI and anxiety; also diagnosed with autism
- Placed in NPS self-contained autism class pursuant to settlement agreement
- District assessment indicated Student did not have communication deficits typically associated with autism



Riverside USD (OAH 2018)

Facts (cont'd)

- District offered continued NPS placement and goals in reading, writing, math, social skills
- Student invited to meeting at which District developed postsecondary transition goal
- Parent refused to consent to IEP
 - Wanted: Student's eligibility changed to autism; his goals changed to reflect the needs of a student with autism; services in speech and language, OT and vision therapy



Riverside USD (OAH 2018)

Issue

- Whether District denied Student FAPE by failing to develop appropriate goals, including specific goals to address autism
- Whether District's IEP—including its goals—offered FAPE such that it could proceed to implement the IEP without parental consent



Riverside USD (OAH 2018)

Decision & Rationale

- ALJ ruled in favor of District
- Each annual goal appropriately addressed Student's areas of need
 - Previous goals were adjusted based on progress and identified weaknesses
- Transition goals addressed Student's stated interests in post-secondary education and competitive employment



Riverside USD (OAH 2018)

Decision & Rationale (cont'd)

- No evidence that Student required goals or services in speech, OT or vision therapy to access general curriculum
- Parent failed to demonstrate that Student's ability to access general curriculum was impeded by autism diagnosis

(Student v. Riverside Unified School Dist. and Riverside Unified School Dist. v. Student (OAH 2018) Case Nos. 2017080966 and 2017040949, 118 LRP 2950)



Riverside USD (OAH 2018)

Practical Compliance Keys



- Individual needs, not eligibility classification, drive IEP team's goal development
- Beware of writing goals that are not robust enough, especially in the wake of Endrew F.
 - Identify weaknesses and then address them



Riverside USD (OAH 2018)

Practical Compliance Keys



- Transition goals are different from annual goals in that they must reflect the desires and plans of the student
 - Law only requires that postsecondary goals be based upon “age appropriate” transition assessments; it does not prescribe that formal transition assessment must be performed, or that standardized measures be used



Bellflower USD (OAH 2017)

Facts

- District developed goals in reading comprehension, spelling/phonics and math for 11-year-old with SLD
- March 2015 IEP: District used Student's scores in Kaufman Test of Academic Achievement as his baseline to set annual IEP goals
 - Did not provide Kaufman aspirational scores



Bellflower USD (OAH 2017)

Facts (cont'd)

- December 2015 IEP: District reported Student met all of his annual goals
- Teachers reported progress
 - But report cards and standardized tests showed only minimal improvement
- December 2016 IEP: Contained combined goal for comprehension/writing



Bellflower USD (OAH 2017)

Issue

- Whether District's IEP team denied FAPE to Student by:
 - Failing to include sufficient and challenging reading goals to ensure meaningful educational benefit
 - Failing to include sufficient writing goals
 - Failing to include sufficient math goals



Bellflower USD (OAH 2017)

Decision & Rationale

- ALJ found in favor of Parent on most issues and awarded 55 hours of compensated
- March 2015 IEP:
 - Reading and spelling/phonics were not measurable because they did not specify instruction level of teacher support
 - Goals compromised because of insufficient data to compare Kaufman scores to monitor progress



Bellflower USD (OAH 2017)

Decision & Rationale (cont'd)

■ December 2015 IEP:

- Reading fluency and writing goals immeasurable because they did not specify Student's grade level or level of teacher support
- No baseline to measure progress on writing goal

■ December 2016 IEP:

- Comprehension/writing goal was vague because it encompassed two separate areas of need and should have been separated

(Student v. Bellflower Unified School Dist. (OAH 2017) Case No. 2017020312, 117 LRP 29290)



Bellflower USD (OAH 2017)

Practical Compliance Keys



■ Formula for drafting measurable goal:

By when . . . (Set target date)

When given . . . (Name the task)

Student . . . (Use his/her name)

Will do what . . . (Target behavior or skill)

At what level of proficiency . . . (e.g., with 80 percent accuracy)

At what frequency . . . (e.g., in four out of five trials)

As measured by what . . . (e.g., teacher observations, data, etc.)



Bellflower USD (OAH 2017)

Practical Compliance Keys



■ Consider these items when drafting goals:

What skill is the goal written for?

What is student able to do at the time the goal is written (baseline)?

When is the student expected to achieve the goal?

What are the conditions for achieving the goal?

What are the mastery criteria for achieving the goal?

Who will implement the goal?

How is the goal measured?

■ Remember the “stranger test”



Other Noteworthy Recent Decisions

Antioch USD (OAH 2018)

- 13-year-old Student with ADHD was denied FAPE due to District's failure to provide him with goals in specific areas of need
- Team drafted goals addressing math, English language arts, and behavior; but no goals addressed anxiety, peer relations or transitioning between activities

(Student v. Antioch Unified School Dist. (OAH 2018) Case No. 2017061061, 118 LRP 4145)



Other Noteworthy Recent Decisions

Etiwanda SD (OAH 2018)

- District's behavior goals for 7-year-old Student with ID—to ask for help, to transition without elopement and to reduce maladaptive behavior—addressed her social, emotional and behavioral needs
- Separate goals in following directions and classroom routines were not required

(Student v. Etiwanda School Dist. (OAH 2018) Case No. 2017110983, 118 LRP 18861)



Other Noteworthy Recent Decisions

Irvine USD (OAH 2018)

- District denied FAPE by failing to obtain current information to identify present levels of performance for 7-year-old with autism
- “The absence of accurate and meaningful present levels made the writing of measurable annual goals impossible”

(Student v. Irvine Unified School Dist. (OAH 2018) Case No. 2017040667, 118 LRP 2932)



Take Aways . . .



- Essential that IEP team review all existing data—including legally compliant and accurate assessments—to confirm that team knows what student can do
- Although Endrew F. stated that IEPs are required to be “appropriately ambitious,” goals still must be attainable



Take Aways . . .



- Encourage everyone, including parents, to provide input on whether proposed goals are both necessary and realistic for student
- Remember that IEPs are flexible documents; check in regularly to evaluate how student is doing and adjust goal(s), as necessary



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