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OSBA Special Education Law Workshop Progress Monitoring Pitfalls

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Agenda

- Basic legal requirements
- Examining the elements of Section 6 of the IEP
 - Purpose
 - Pitfalls
 - Relevance to progress monitoring
- Other considerations




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Basic Legal Requirements



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What is the legal definition of “progress monitoring”?

- Here are the federal and state statute and regulatory citations for the definition of “progress monitoring”:
- Do we at least know what progress monitoring really measures?
 - Student progress?
 - Effectiveness of instruction?
 - Appropriateness of goals?
 - Appropriateness of methods of measuring progress?
 - External factors (e.g. divorce, death, medication changes, etc.)?



Big picture legal requirements

- FAPE
 - Students with disabilities are entitled to a meaningful educational benefit
 - Regardless of what progress monitoring is measuring, it ultimately goes to FAPE
 - E.g. a child for whom inappropriate goals are written may not receive FAPE/we may not be able to prove we provided it
 - E.g. a child for whom inadequate instruction is being provided is not receiving FAPE
- Procedural Compliance (parental participation)
 - Parents are entitled to “meaningfully participate” in planning (thus, monitoring) the special education of their child
 - Denial of parental participation is a standard element of any due process complaint, formal complaint, etc.
 - Even without a formal dispute, failing to facilitate meaningful parental participation leads to distrust, resentment, etc.



Ohio Operating Standards for the Education of Children with Disabilities

- AKA “Regs,” “Regulations,” “Operating Standards,” “OAC,” “Administrative Code”
- IDEA is a federal law that requires states to adopt regulations to ensure compliance by schools
 - Ohio’s regulations are found at Ohio Administrative Code 3301-51
- OAC 3301-51-07 sets forth requirements for IEPs
 - Ohio has also developed the “required” IEP form (PR07)
 - Section 6 of the IEP sets forth present levels, goals, methods for measuring progress, objectives/ benchmarks, and progress reporting methods/frequency

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OAC 3301-51-07(H)(1)(d)

- The IEP must include a description of
 - “How the child’s progress toward meeting the annual goals... will be measured; and
 - “When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided”
- No list of possible ways to measure progress is found in the law (e.g. curriculum based assessments, rubrics, observation, etc.)
- No specific timeline or frequency for reporting progress is found in the law
 - 504 implications
 - Meaningful parental participation implications
 - Obligations to reconvene implications (i.e. FAPE)
 - Statute of limitation implications

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Examining the Elements of Section 6 of the IEP

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Examining the elements of Section 6 of the IEP

1. Present Level of Academic Achievement and Functional Performance
2. Measurable Annual Goal
3. Method(s) [of Measurement]
4. Measurable Objectives
5. Method and Frequency for Reporting the Child's Progress to Parents

- Each of the elements creates an opportunity to set the team up for success, or, conversely, a pitfall in relation to progress monitoring

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Present Level of Academic Achievement and Functional Performance

- Purpose: This gives a snapshot of what the challenge is that we're trying to address
 - Pitfall: Use vague and overly "rosy" words to describe present levels
- What this means to progress monitoring:
 - This establishes our baseline – without it we don't even know what we're measuring against
 - Unclear or "kind" descriptions of a student's present level can lead to overly ambitious goals and objectives, which in turn can lead to vague and overly rosy progress reports
 - Extended over multiple IEPs, especially for higher needs kids, this can lead to progress monitoring that reflects well-intentioned fibs rather than a student's actual progress
 - The whole point of progress monitoring is to help parents meaningfully participate – deny this at the risk of expensive compensatory education and services beyond age 22



Measurable Annual Goal

- Purpose: Focus services on an identified need in a way that is meaningful and verifiable
 - Pitfall: Use ambiguous or undefined terms (i.e. write a goal that is not really measurable)
- What this means to progress monitoring:
 - Much like with imprecise or inaccurate present levels, this can lead to imprecise or overly rosy progress monitoring
 - Even if the goal is reasonable and delivery of services is exemplary, it is difficult to measure something that is inherently unmeasurable
 - Even if measurement of progress is accurate, it may not mean the same thing to every member of the team if the goal itself is vague
 - This all goes back to meaningful parental participation



Method(s) [of Measurement]

- Purpose: Identify the approach to be used for measurement and ensure a consistent set of data
 - Pitfall: Choose a method that does not match up with the goal and objectives/benchmarks
- What this means to progress monitoring:
 - The wrong method leads to either meaningless data or made-up results
 - Keep in mind you are measuring the same thing from two angles: 1) How is the student progressing?; 2) Is our instruction effective?
 - Inappropriate methods could make it difficult to discern which angle to address – thereby denying FAPE
 - Sometimes the wrong method is symptomatic of “copy and paste” IEP drafting – again, this can deny FAPE

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Method(s) [of Measurement]

- Curriculum based assessment
- Portfolios
- Observations/anecdotal records
- Short-cycle assessments
- Performance assessments
- Checklists
- Running records
- Work samples
- Inventories
- Rubrics

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Measurable Objectives

- (See the section on Measurable Annual Goal)
- Note: Progress monitoring is required for goals, not objectives/benchmarks
 - Most district choose to report progress on goals by reporting progress on objectives
 - Be clear with parents (in writing) if you are showing inadequate or no progress on one objective/benchmark but it is not of concern in relation to progress on the goal due to progress on other objectives/benchmarks

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Method and Frequency for Reporting the Child's Progress to Parents

- Purpose: Memorialize plan to communicate progress on IEP goals to parents
 - Pitfall: Commit to an unrealistic plan
- What this means to progress monitoring:
 - OAC 3301-51-07(L)(2)(a)(ii)(a) requires the IEP team to reconvene and revise the IEP whenever there is a "lack of expected progress" toward IEP goals – failing to do so denies FAPE
 - Good news from the 6th Circuit US Court of Appeals: "The IDEA does not require schools to communicate with the parents of disabled children as frequently as the parents wish."
 - Bad news from the law: Reporting progress with interims and report cards only may be inadequate – frequency must be based on individual child's needs AND requirement to ensure meaningful parental participation
 - Figure out ways to "double dip" in providing service and monitoring progress
 - (Appropriately) use technology to ease your burden

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Other Considerations



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You've avoided the pitfalls, but progress is not meeting expectations

- OAC 3301-51-07(L)(2)(a)(ii)(a) requires the IEP team to reconvene and revise the IEP whenever there is a "lack of expected progress" toward IEP goals – failing to do so denies FAPE
 - This cuts both ways – early mastery or inadequate progress
- Having realistic and measurable goals, appropriate benchmarks/objectives, and good ways to measure progress ensure you're not first learning about this at the annual review
- Requiring more of your staff than "AP," "LP," "M" for progress reporting is key
 - Focus efforts on challenging kids, challenging parents, challenging goals
 - Be even more honest and forthright in these situations (seems obvious, but the opposite is often what happens)



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A parent is demanding ESY services and you want to say no

- Meaningful and frequent progress monitoring is needed to substantiate ESY refusals
- While ESY, like everything else in an IEP, is about FAPE, Ohio has taken a specific approach
 - ESY is required when failing to provide it would result in retention and recoupment issues that would deny FAPE
 - (All kids experience retention and recoupment issues)
- Good progress monitoring can protect against expensive and unnecessary ESY services
 - Inadequate progress monitoring makes ESY a fight you'll never pick (you will just go along to get along)

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“Informal” progress monitoring does not align with the data gathered per the IEP

- Kids on IEPs interact with a lot of staff
 - Sometimes outside service providers
 - Sometimes not certified professionals
 - Almost always people who want to help kids with disabilities and their families
- Parents of kids on IEPs sometimes demand lots of communication
- It is essential that all staff working on behalf of the district follow chain of command and communicate with appropriate parties
 - Informal progress monitoring (e.g. daily logs, text messages, phone calls) can be disastrous
 - Anything appropriate to communicate to parents is appropriate to communicate to a supervisor

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A student with significant needs makes such minimal progress it is hard to measure

- IDEA does not accept that a student will not show progress over time
- If our progress monitoring fails to show any progress, we may have walked into a pitfall in Section 6
 - Present levels were inaccurate
 - Goal/objective/benchmark was overly ambitious
 - Remember – you do not need consent for each goal
 - The method of measuring progress is ineffective
- Convene the team without delay
 - It is not unusual to encounter IEPs that have changed little for years for higher needs kids (especially in high school)
 - Beware the plateau

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A complaint is filed two years after the fact alleging a child did not receive FAPE

- Progress monitoring and supporting records is some of the best evidence of FAPE being provided
 - We can't rely on reevaluations because the most recent one might be nearly three years old
 - Evaluation results after a complaint is filed are suspect no matter what the outcome
- Progress monitoring is often nondescript abbreviations
 - Inaccurate or imprecise hurts the party defending FAPE
 - We need data supporting what is reported
- Formal complaints (as opposed to due process complaints) are becoming more common
 - ODE will find a violation every time if we do not maintain adequate records supporting progress monitoring


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Studentprogress.org (OSEP-funded resource)

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Student Progress Monitoring
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National Center on Student Progress Monitoring



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Thank you for your interest in the National Center on Student Progress Monitoring!


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What is Progress Monitoring?


Progress monitoring is a scientifically based practice that is used to assess students' academic performance and evaluate the effectiveness of instruction. Progress monitoring can be implemented with individual students or an entire class.

How does progress monitoring work?
What are the benefits of progress monitoring?
Who should be practicing progress monitoring?
What challenges face progress monitoring?

Review of Tools



Web Resources




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