

# The Legal Benefits of Standards-Based IEPs

by

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## IEP Content Requirements Under the IDEA

*Required Content of IEPs*—All IEPs developed by means of the IDEA procedures outlined above, must contain the following:

1. A statement of the child's **present levels of academic achievement and functional performance**, addressing how the disability affects involvement and progress in the regular curriculum (or, for preschool children, participation in appropriate activities);
2. A statement of **measurable annual goals** designed to meet the child's disability-related needs, enable the child to participate and progress in regular curriculum, and meet other needs resulting from the child's disability;

*Note*—IEPs for students who take alternate statewide assessments based on alternate achievement standards must also include short-term objectives or benchmarks. Nevertheless, schools may include short-term objectives in the IEPs of other students to help determine progress toward annual goals.

3. A description of **how the child's progress will be measured** and at what intervals;
4. A statement of the **special education, related services, and supplementary aids and services** (based on peer-reviewed research to the extent practicable), as well as program modifications;
5. An explanation of **the extent to which the student will not be educated with nondisabled students** in regular classes;
6. A statement of **accommodations needed to measure the student's performance on statewide or district-wide assessments**, including whether the student will take an alternate assessment and why;

7. The projected **date for beginning of services and modifications, their anticipated frequency, location, and duration.** 34 C.F.R. §300.320(a).

*Additional Considerations and Factors*—As fundamental guideposts to guide the process of developing the student’s IEP, the IDEA states that the IEP team, “shall consider—

- (i) the strengths of the child;
- (ii) the concerns of the parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child; and
- (iv) the academic, developmental, and functional needs of the child.” 20 U.S.C. §1414(d)(3)(A); *see also* 34 C.F.R. §300.324(a).

Also, for both initial IEPs and subsequent IEP reviews, the IEP team must take into consideration the following special factors in developing the IEP:

- (i) positive behavioral interventions, supports, or strategies to address behavior (in the case of students whose behavior impedes learning or the learning of others);
- (ii) the language needs of the child, if the child has limited English proficiency;
- (iii) instruction in, and use of, Braille (in the case of children with visual impairments or blindness);
- (iv) communication needs, including special considerations involving students who are deaf or hearing-impaired;
- (v) needs for assistive technology devices and services. 34 C.F.R. §300.324(a)(2).

*Reference to Regular Curriculum*—Since 1997, the IDEA has included provisions that intend to align IEPs to states’ regular curriculum standards. Thus, present levels of performance must be stated in a manner that addresses how the disability affects involvement and progress in the regular curriculum. Likewise, the annual goals must be drafted to “enable the child to participate and progress in regular curriculum.” The focus is tied both to the increased desire for higher expectations for special education students, and the legislative priority to include all students in school accountability processes based on performance on statewide assessment.

*Reviews of IEPs*—IEPs must be reviewed periodically, but at least annually, to determine whether the annual goals are being achieved. 34 C.F.R. §300.324(b)(1)(i). After reviews, the IEP must be revised to address

lack of expected progress, results of reevaluations, information provided after review of existing evaluation data (including information from the parent), the child's anticipated needs, or other matters. 34 C.F.R. §300.324(b)(1)(ii).

*The Key Role of Present Levels of Performance*—The process of developing the IEP starts with a determination of the student's present levels of academic achievement and functional performance (PLAAFP), as well as a review of the last year's IEP annual goals and objectives. In order to figure out what objectives to develop for the current year, the committee needs to know how the child did on last-year's objectives. In addition, the committee also determines the child's present competencies. Both of these levels of review help ensure that the student is making measurable progress from year to year. If a student is not mastering most IEP goals and objectives, there is one of two problems: either the goals and objectives are unrealistically advanced, or the services and the placement are not conducive to the child's progress on the objectives.

*Practice Notes*—Statements of PLAAFP should contain data from more than one source, such as a single evaluation. Although the IDEA regulation does not use the term "baseline data," the PLAAFP should contain baseline data from which IEP goals can be generated. They should also go beyond stating grade-levels or functional skills, and address how the disability is impacting the student's participation and progress in the general curriculum. Lastly, the PLAAFP should be complete, in that they address all areas of educational need (whether academic, behavioral, functional, social, physical) implicated by the student's disabilities.

*Case in Point*—The case of *Lathrop R-II Sch. Dist. v. D. G.*, 611 F.3d 419, 54 IDELR 276 (8<sup>th</sup> Cir. 2010) involved a boy with Autism and a school's efforts to meet his needs in a variety of ways, as opposed to a parent's desire for private placement with different methods. When the student transferred to the District, he was among the first students with Autism to be served there, so the District arranged for Autism training for staff, as well as the help of an Autism Specialist, who collected eight weeks of data. The student's program included numerous services and features, as well as an IEP with 27 specific goals. The parents requested that the District pay for private placement at a facility for students with Autism. When the District refused on LRE grounds, they filed for due process, primarily alleging that the IEP goals and objectives were inappropriate because they lacked "baseline data" or behavioral goals and objectives. After a hearing and appeal, the Circuit Court ruled that "baseline data" are not necessarily required for IEP goals and objectives by the IDEA, but rather a statement of present levels of performance. The school's IEP, moreover, contained 12 pages of detailed present levels of performance, and many of the goals and

objectives indeed contained statements that would suffice as “baseline data.”

*Case in Point*—In *Bend-Lapine School District v. K.H.*, 43 IDELR 191 (D.C. Or. 2005), affirmed, 48 IDELR 33 (9th Cir. 2007) the court held that the student’s IEP failed to establish a baseline of student’s behaviors and set measurable goals. “Without that baseline of current performance and/or behavior, it is difficult to draft measurable and relevant annual goals. The District provided the following information regarding K.H.’s ‘behaviors,’ presumably based on K.H.’s disability: her behaviors ‘resulted in short term suspensions,’ K.H. had been physically and verbally aggressive, and K.H. ‘had been involved in some sexual harassment incidents.’ It was further noted that K.H. had difficulty maintaining friendships, verified by the behavioral inventory, and that people ‘don’t always enjoy [K.H.’s] company.’ Finally, K.H.’s ‘inappropriate behaviors interfere with her success in the classroom both socially and academically.’ The court held that the statement was insufficient to determine an accurate baseline and failed to provide any measurable level of problematic behaviors. In addition, the statement made no effort to specify how the behaviors impacted her ability to progress toward grade-level standards, as required by the Act.

*Standards-Based Model for PLAAFP*—“Under a standards-based approach, discussion of present performance levels starts from a discussion of the state standards the student has achieved and concentrates on identifying the skills and knowledge the student has already acquired that will allow him/her to work toward standards for the current grade level.” Ahearn, *Standards-Based IEPs: Implementation in Selected States*, at p. 5, Project Forum at NASDSE (May 2006).

## **The Movement Toward Standards Focus for IEPs**

*Policy Issues*—The IDEA details neither how annual goals or short-term objectives should be drafted, nor what they should contain. “Traditionally, the IEP process has started with a focus on the skills the child had achieved and the child’s needs that had been revealed through evaluations conducted for the IEP. Although academic areas would be included in the discussion, the emphasis would most often be on the child’s acquisition of basic developmental and/or functional skills unrelated to a specific academic area.” Ahearn, *Standards-Based IEP: Implementation Update*, at p. 1, NASDSE inForum Brief Policy Analysis (June 2010). But since 1997, the Congress has made clear that special education students’ educations must be focused on access to, and participation in, the general curriculum. This reform came after inclusion and mainstreaming movements served to significantly increase special education students’ access to the regular classroom. Following up on this increased physical presence in

regular classes, the IEP content sections of the 1997 version of the IDEA and its regulations focused, at various points, on how the child's disability affects involvement in the general curriculum and the services that are necessary for the child to be involved in and progress in the general curriculum. Thus, the focus turned from one of physical access to the regular classroom to one of access to the regular curriculum as well. Thereafter, both the 2001 No Child Left Behind (NCLB) version of the Elementary and Secondary Education Act and the 2004 reauthorization of IDEA likewise emphasized the priority of expanding special education students' participation in the general curriculum, and for schools to be accountable for their performance in that regard. "Proponents of the adoption of standards-based IEPs describe this practice as the most effective way to implement real access to the general education curriculum for students with disabilities." Ahearn, *Standards-Based IEP: Implementation Update*, at p. 5, NASDSE inForum Brief Policy Analysis (June 2010).

The movement toward a standards focus in special education contrasted against the established model for developing IEPs. "The traditional model of developing IEPs and of designing special education viewed students with disabilities in isolation of broader general education curricular goals. Children were tested; their learning strengths and deficits were identified; and individual goals, objectives, and strategies were devised to meet the deficits." Nolet & McLaughlin, *Accessing the General Curriculum: Including Students with Disabilities in Standards-Based Reform* (Corwin Press, 2d ed. 2005)

The USDOE commentary to the NCLB regulations echoes the evolution traced above, stating that "[i]ncorporating State content standards in IEP goals is not a new idea. Because the reauthorization of IDEA in 1997 required States to provide students with disabilities access to the general curriculum, the field has been working toward incorporating State standards in IEP goals. Some States already require IEP Teams to select the grade-level content standards that the student has not yet mastered and to develop goals on the basis of the skills and knowledge that the student needs to acquire in order to meet those standards. In addition, some States have developed extensive training materials and professional development opportunities for staff to learn how to write IEP goals that are tied to State standards." 72 Fed.Reg. 17,758 (April 9, 2007).

*A Working Definition for a Standards-Based IEP*—"A process and document that is framed by the state standards and that contains goals aligned with, and chosen to facilitate the student's achievement of, state grade-level standards." Ahearn, *Standards-Based IEPs: Implementation in Selected States*, at p. 7, Project Forum at NASDSE (May 2006).

"A standards-based IEP process starts with a review by the IEP team of the student's present level of academic achievement performance focused on the student's achievement of academic standards for the enrolled grade. This information is then used to identify which state standards the student has achieved and which standards remain to be accomplished. It is important to note that the student's IEP resulting from this process does not contain a restatement of the state standards, but rather includes goals that designate the necessary

learning—the specially designed instruction—that will lead to the student's attaining the standards that the team has identified as not yet achieved. If needed, goals related to acquisition of functional skills that will facilitate the achievement of state academic standards are also included." Ahearn, *Standards-Based IEP: Implementation Update*, at p. 1, NASDSE inForum Brief Policy Analysis (June 2010).

#### *Types of Academic Achievement Standards—*

1. Grade-level achievement standards;
2. Alternate achievement standards for students with significant cognitive disabilities; and
3. Modified achievement standards that are aligned with regular standards for students who are capable of progress toward grade-level standards but may not reach them in the same timeframe as other students. Ahearn, *Standards-Based IEPs: Implementation in Selected States*, at p. 6, Project Forum at NASDSE (May 2006).

*Commentary on Developing IEP Goals—*"Currently each state's standards are different from every other state's with a wide array of approaches in the number, types and content of those standards. The differences among states in the content of their standards means that in some states, there may be multiple goals related to one standard or, in other states, many standards may be involved in one goal. Thus, each state that adopts a standards-based IEP has to provide training for its IEP team members on how to identify appropriate standards-based goals. It is critical that all members of IEP teams have a clear and complete understanding of the state standards as a whole and that they understand how to develop goals that will reflect the student's need for specific academic skills to achieve the grade-level standards." Ahearn, *Standards-Based IEP: Implementation Update*, at p. 2, NASDSE inForum Brief Policy Analysis (June 2010).

*U.S. Department of Education Guidance—*Additional USDE guidance, provided in *No Child Left Behind Modified Academic Achievement Standards, Nonregulatory Guidance, USDE July 20, 2007 [hereinafter "July 2007 Guidance"]*, explains the benefits of this approach to all students with disabilities:

"IEP goals based on grade-level content standards are appropriate for a wide range of students with disabilities, including students with the most significant cognitive disabilities. **It is not our intent to limit the implementation of IEP goals based on grade-level content standards to students participating in an alternate assessment based on modified academic achievement standards or those achieving close to grade level.** The regulations require a student's IEP to include goals based on grade-level content standards only for the subjects to be assessed based on modified academic achievement standards. For example, if a student will be assessed based on a modified academic achievement standard in reading and math, IEP goals for reading and math must be based on grade-level content standards. **However, we encourage all IEP**

**goals that are related to academic achievement to be based on grade level content, especially since the vast majority of students with disabilities will be assessed based on those standards.”** *July 2007 Guidance, E-5, p. 31 (emphasis added).*

***NCLB Regulations on Alternate Assessments and IEP Goals***—The federal regulations issued in 2007 to implement NCLB addressed the issue of standards-bases for IEPs for students who are assessed on modified academic standards as follows:

State guidelines. If a State defines alternate or modified academic achievement standards..., the State must do the following:

(2) For students who are assessed based on modified academic achievement standards, the State must—

- (i) Inform IEP teams that a student may be assessed based on modified academic achievement standards in one or more subjects for which assessments are administered under section 200.2;
- (ii) Establish and monitor implementation of clear and appropriate guidelines for IEP teams to apply in developing and implementing IEPs for students who are assessed based on modified academic achievement standards. **These students' IEPs must—**

- (A) Include IEP goals that are based on the academic content standards for the grade in which a student is enrolled; and**
- (B) Be designed to monitor a student's progress in achieving the student's standards-based goals;**

- (iii) Ensure that students who are assessed based on modified academic achievement standards have access to the curriculum, including instruction, for the grade in which the students are enrolled;
- (iv) Ensure that students who take alternate assessments based on modified academic achievement standards are not precluded from attempting to complete the requirements, as defined by the State, for a regular high school diploma; and
- (v) Ensure that each IEP team reviews annually for each subject, according to the criteria in paragraph (e)(2) of this section, its decision to assess a student based on modified academic achievement standards to ensure that those standards remain appropriate. 34 C.F.R. §200.1(f)(2) (emphasis added).

Thus, the NCLB regulations mandate that states require schools to develop IEP goals based on grade-level academic content standards for students who will be assessed on alternate academic *achievement* standards (i.e., AA-MAS—alternate assessments based on modified academic standards). These assessments are meant for students whose disabilities preclude the mastery of regular achievement standards in regular timeframes. 34 C.F.R. §200.1(e)(2)(ii)(A). Since many states took up the offer to develop such alternate

assessments, the regulation has influenced those states toward adoption of standards-based IEPs. “The addition of an AA-MAS as an option to the federal assessment system under the [NCLB] has had an effect on the standards-based movement.” Ahearn, *Standards-Based IEP: Implementation Update*, at p. 4, NASDSE inForum Brief Policy Analysis (June 2010). NASDSE indicates that at least 14 of the 33 states surveyed that had adopted a standards-based IEP reported that the change was brought about by their state’s decision to develop an alternate assessment on modified standards. *Id.*

***USDE Rationales for Requiring IEP Goals to be Based on Grade-Level Content***—As discussed above, the NCLB regulations require IEP goals to be *based* on grade-level content even when students take alternate assessments based on modified achievement standards (i.e., for students that cannot make progress toward grade-level standards in the same timeframe as typical peers). The following quotations are excerpts from the USDE commentary that accompanied the 2007 additions to the NCLB regulations that explain this requirement:

“We believe that students participating in alternate assessments based on modified academic achievement standards will benefit more when IEP Teams focus on goals that are based on grade-level content standards, rather than on short-term objectives or benchmarks.” 72 Fed.Reg. 17,770 (April 9, 2007).

“We believe that requiring IEP Teams to incorporate grade-level content standards in the IEP of a student who is assessed based on modified academic achievement standards and to monitor the student’s progress in achieving the standards-based goals will focus IEP Teams on identifying the educational supports and services that the student needs to reach those standards. This will align the student’s instruction with the general education curriculum and the assessment that the IEP Team determines is most appropriate for the student.” 72 Fed.Reg. 17,759 (April 9, 2007).

“One way to help ensure that students have access to grade-level content before they are assessed based on modified academic achievement standards, and receive instruction in grade-level content after they are assessed based on modified academic achievement standards, is to require IEP Teams to include goals that are based on grade-level content standards in the IEPs of these students. Such an approach focuses the IEP Team and the student on grade-level content and the student’s achievement level relative to those content standards. Therefore, we have added a requirement that the IEP of a student to be assessed based on modified academic achievement standards include goals that are based on the academic content standards for the grade in which the student is enrolled and that the IEP be designed to monitor a student’s progress in achieving the student’s standards-based goals.” 72 Fed.Reg. 17,758 (April 9, 2007).

“We continue to believe that it is critical to ensure that students who participate in an alternate assessment based on modified academic achievement standards receive instruction in grade-level content so that they are prepared to demonstrate their mastery of grade-level content on an alternate assessment

based on modified academic achievement standards and can move closer to grade-level achievement." 72 Fed.Reg. 17,758 (April 9, 2007).

## **Benefits of Standards-Based IEPs**

*Structure for IEPs*—Standards can provide a structure for IEPs that is more accurate and individualized than developing IEPs on the basis of disability categories or available resources.

*Consistency of Quality*—Districts that emphasize standards bases for IEPs can have the benefit of increased consistency of quality across campuses. Districts in which some schools develop standards-based IEPs while others do not, will have discrepancies and disparities in IEP quality that can lead to disputes with parents.

*Impact on Instruction*—When IEPs are firmly based on specific standards, staff will better focus instructional efforts on lessons and activities that work toward meeting those standards.

*Behavioral Implications*—In many situations where students exhibit inappropriate behavior that impedes their learning or that of others, the tendency is to focus on extinguishing the maladaptive behavior. Under a standards-based approach, the focus shifts to the teaching of appropriate replacement behavior.

*Elimination of Curriculum "Separateness"*—When IEPs are formed around state standards, the notion of special education students receiving a "separate" curriculum are broken down and special education staff and regular education staff begin talking in the same terms.

*IEPs Become Easier for Parents to Understand*—For many parents, IEPs that are discussed in terms of grade-level standards or modified standards based on regular content are easier to understand than the highly technical language of separate standards. Parents can better see how achievement of certain content standards builds towards acquisition of future goals.

*Minimized exposure to legal challenges to IEP*—An IEP that is premised on regular curriculum standards, and the special education services that will be needed to reach those standards, is likely to fare well should there be a legal action to challenge its appropriateness. Even if all goals (themselves linked to grade-level content) are not met, the IEP might survive legal scrutiny since the Act does not provide a guarantee that any IDEA student will progress as expected. The *Rowley* standard requires, rather, that the school provide and implement an IEP that is reasonably calculated to confer educational benefit.

*Increased Compliance with LRE through "Curricular" LRE*—A recurring theme in the modern versions of the IDEA, especially post-NCLB, is the need for all special education students to have greater access to and involvement in the

regular education curriculum. Beginning in its findings under IDEA '97, Congress articulated that desire using the familiar language of the Least Restrictive Environment. "Over 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by... having high expectations for such children and ensuring their access in the general curriculum to the maximum extent possible[.]" 20 USC §1401(c)(5)(1997 version of IDEA). The language seems aptly chosen. The IDEA concept of Least Restrictive Environment (LRE), focused primarily on education of students with disabilities alongside nondisabled peers provides a background to the modern push for greater participation by students with disabilities in the grade-level curriculum. LRE is often described in shorthand as "maximum exposure to nondisabled peers" with the regular education classroom serving as the default placement. The modern duty to leave no child behind can be described in similar shorthand as "maximum appropriate exposure to grade-level curriculum," with the regular grade-level curriculum obviously serving as the default, hence a "Curricular LRE" mandate.

*Easier and more objective measurement of progress*—The more IEP goals and objectives are aligned with regular grade-level content standards, the more straightforward the measurement of student progress. Teachers within a state are well-aware of their state-mandated curriculum, experienced in delivering the curriculum in the classroom, and familiar with measuring students' progress on the curriculum through objective means. Thus, the process of determining a student's progress on a particular goal is not greatly different than measuring a nondisabled student's performance on a grade-level content standard.

### *On-Going Debate Over the Standards-Based Approach*

The move towards a standards-based approach to educational programming for students with disabilities has not been without serious debate. For some, the movement toward standards-based IEPs has also meant a decrease in the individualization of student programming that was special education's traditional approach. Admittedly, there is inherent policy tension in the co-existing priorities of linking all IEPs to specific state standards that are applicable across an entire state and that of ensuring that the IEP process and product remain fully individualized. For others, the desire to link IEPs to state standards does not mean that IEPs must be fully standards-based, since IEPs must, ultimately, be based on the individualized needs of the individual student and not on curricular standards. Likewise, some parents have also expressed concern about the standards-based movement, as increased expectations for students inevitably mean more intensive and challenging day-to-day classwork and increased homework requirements. Other parents are taken aback by the shift in focus from working on deficits related to the characteristics of their child's disability to one based primarily on access to state-mandated standards.

## Standards-Based IEPs for Students with Severe Cognitive Deficits

The biggest challenge in adopting a standards-based IEP model is addressing the individual needs of students with severe cognitive impairments. For many of these students, their education needs center on functional and life-skills issues that are not reflected in states' academic content standards. Needs involving feeding skills, dressing and undressing, basic social skills, compliance, toileting, and on-task attention span may be crucial to these students' educational benefit, but have no state-mandated content standards for which to directly refer.

Commentators address this problem by indicating that an IEP that results from a standards-based process for a severely cognitively impaired student "does not contain a restatement of the state standards, but rather includes goals that designate the necessary learning—the specially designed instruction—that will lead to the student's attaining the standards that the team has identified as not yet achieved." Ahearn, *Standards-Based IEP: Implementation Update*, at p. 1, NASDSE inForum Brief Policy Analysis (June 2010). Thus, "if needed, goals related to the acquisition of functional skills that will facilitate the achievement of grade-level standards are also included." *Id.* The standards-based IEP model is therefore not an all or nothing paradigm—although students with severe cognitive impairments may have significant functional and life-skills needs, those can be addressed in the IEP with a focus to attaining the skills that will be needed to access at least the lower level of grade-level content. Nevertheless, the challenge is daunting for staff that have to ascertain how to connect the child's IEP goals, which must address key functional needs, to any grade-level standards in a state-mandated curriculum for a severely cognitively impaired student who may be struggling with acquisition of minimal life-skills competencies.

### The Seven-Step Process to Creating Standards-Based IEPs

1. Consider the grade-level content standards for the grade in which the student is enrolled, or would be enrolled, based on age.
2. Examine classroom and student data to determine where the student is functioning in relation to the grade-level standards.
3. Develop the present levels of academic achievement and functional performance.
4. Develop measurable annual goals aligned with grade-level academic content standards.
5. Assess and report the student's progress throughout the year.

6. Identify specially designed instruction including accommodations and/or modifications needed to access and progress in the general education curriculum.
7. Determine the most appropriate assessment option.

### **Problems Areas for Schools in Drafting IEPs**

- Vague or missing descriptions of how the disability impacts participation in the general curriculum
- In reviewing evaluation data, a lack of focus on how evaluators determine that the disability will affect academic performance in the classroom, and an over-focus on the diagnostic and eligibility determination.
- Insufficient present performance data to develop meaningful and realistic annual goals and short-term objectives
- Overreliance on software-based IEP goals and objectives that are not closely linked to the state curriculum standards
- Statements of present levels of performance based only on evaluation scores
- Present levels of performance “borrowed” from past IEP
- Accommodations and supplementary aids/services not logically aligned with how the disability affects involvement in general curriculum
- Overreliance on drop-down menus on IEP software for selection of accommodations or program modifications
- Agreeing to include an accommodation on an IEP without a data basis