

The Failure-to-Implement the IEP Dimension of FAPE under the IDEA: The Current Approaches for Each Circuit

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The central obligation under the Individuals with Disabilities Education Act (IDEA) is the provision of a free appropriate public education (FAPE) to each eligible student.¹ Thus far, the courts and, in part, Congress have evolved three successive dimensions, or “faces,” of FAPE: procedural, substantive, and implementation.² The retrospective remedies under the IDEA, which are tuition reimbursement and compensatory education, require denial of FAPE under one or more of these faces of FAPE.³

To fill a gap in the legal literature,⁴ this brief article provides a current tabulation of the case law in each jurisdiction for the competing approaches for the leading form of the implementation dimension—failure to implement (FTI) the IEP.⁵ Unlike the procedural dimension, which started with *Board of Education v. Rowley*⁶ and evolved into a two-step adjudicative analysis

1. See, e.g., *Sytsema v. Acad. Sch. Dist.*, 538 F.3d 1306, 1312, 236 Educ. L. Rep. 94 (10th Cir. 2008) (characterizing FAPE as the “central pillar of the IDEA”). The vehicle for FAPE under the IDEA is the individualized education program (IEP). E.g., *Murray v. Montrose Cnty. Sch. Dist.* RE-1J, 51 F.3d 921, 923 n.3, 99 Educ. L. Rep. 126 (10th Cir. 1995) (referring to the IEP as the “cornerstone” of this central pillar).

2. See, e.g., Perry A. Zirkel, *An Adjudicative Checklist of the Criteria for the Four Dimensions of FAPE under the IDEA*, 346 EDUC. L. REP. 18 (2017). The implementation dimension that is the focus here based on the relatively extensive case law to date, is failure-to-implement the IEP. In contrast, the case law is only embryonic for capacity-to-implement the IEP, which focuses on the immediate future rather than the immediate past and may remain in a largely undeveloped state or evolve into a separate subdimension or dimension. *Id.*

3. See, e.g., Perry A. Zirkel, *An Adjudicative Checklist of Criteria for the Two Primary Remedies under the IDEA*, 354 EDUC. L. REP. 637 (2018); Perry A. Zirkel, *The Remedial Authority of Hearing/Review Officers under the IDEA: The Latest Update*, 37 J. NAT’L ASS’N ADMIN. L. JUDICIARY 505 (2018).

4. Earlier articles have addressed other aspects of this dimension of FAPE. See, e.g., David Ferster, *Broken Promises: When Does a School’s Failure to Implement an Individualized Education Program Deny a Disabled Student a Free and Appropriate Education*, 28 BUFF. PUB. INT. L.J. 71 (2009) (advocating the per se approach); Perry A. Zirkel & Edward T. Bauer, *The Third Dimension of FAPE under the IDEA: IEP Implementation*, 36 J. NAT’L ASS’N ADMIN. L. JUDICIARY 414 (2016) (delineating a preliminary potential categorization, including the per se approach); Chelsea Henderson, Note, *Perfect Adherence or Material Deviation?: The Eleventh Circuit’s Bright IDEA in Resolving Individualized Education Plan Implementation Cases*, 71 MERCER L. REV. 1229 (2020) (analyzing L.J. as a step forward but advocating for a more specific and uniform approach); Annie Kors, Comment, *In Need of Better Material: A New Approach to Implementation Challenges under the IDEA*, 89 U. CHI. L. REV. 1021 (2022) (proposing a burden-shifting approach that accounts for both unforeseen or unavoidable circumstances and the proportionality of the school’s response to those circumstances); Matthew S. Weiner, Comment, *Material Failure and IEP Implementation: How the Ninth Circuit Pulled the Teeth Out of the Individuals with Disabilities Education Act*, 39 SW. L. REV. 541 (2010) (advocating a per se rather than materiality approach).

5. *Supra* note 2. This dimension became more prominent in the due process hearing decisions and subsequent judicial case law arising from the shift to remote instruction as a result of the COVID-19 pandemic. See, e.g., Perry A. Zirkel, *COVID-19 and Students with Disabilities: A Snapshot of the Legal Activity to Date*, 419 EDUC. L. REP. 1 (2023).

6. 458 U.S. 176, 206–07 (1982) (“First, has the State complied with the procedures set forth in the Act? And second, is the [IEP] . . . reasonably calculated to enable the child to receive educational *benefits*?” (emphasis added)).

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in the 2004 amendments of the IDEA,⁷ and the substantive dimension, which also started with *Rowley* and became refined in *Andrew F. v. Douglas County School District*,⁸ FTI has not yet developed into a uniform national standard. Instead, three successive federal appeals court decisions serve as the three-part framework for the currently competing approaches to FTI.

FRAMEWORK DECISIONS

In the first of these decisions, *Houston Independent School District v. Bobby R.*,⁹ the Fifth Circuit addressed FTI within its particular four-factor analysis for substantive FAPE.¹⁰ Specifically, under the third factor, the Fifth Circuit rejected a per se approach, which would only require preponderant proof of more than a de minimis FTI, instead requiring the plaintiff-parent to “demonstrate that the [defendant district] failed to implement *substantial or significant provisions of the IEP*.”¹¹ The court prefaced this formulation by concluding that “the significant provisions of the [child’s] IEP were followed and, as a result, he received an educational benefit.”¹² Providing a generic term for this approach, the court explained: “This approach affords local agencies some flexibility in implementing IEP’s, but it still holds those agencies accountable for *material* failures and for providing the disabled child a meaningful educational benefit.”¹³

However, the *Bobby R.* court left three questions unanswered in applying this standard. First, by not generally concluding that the district implemented the significant provisions of the IEP,¹⁴ the court did not provide any indication of how to determine whether a particular provision was substantial or significant, including the intended difference between these two terms. Second, for the same reason, the court did not provide any indication how much of a shortfall for a substantial or significant IEP provision is required for a FTI violation. Finally

7. 20 U.S.C. § 1415(f)(3)(E)(ii) (requiring for denial of FAPE (1) one or more procedural violations that (2) result in loss in either the parents’ right for meaningful participation or the student’s right to substantive benefit). This two-step test represents a codification of the post-*Rowley* lower court case law. See, e.g., Perry A. Zirkel, *Parental Participation: The Paramount Procedural Requirement under the IDEA?*, 15 CONN. PUB. INT. L.J. 1, 4–12 (2016) (tracking the *Rowley* progeny to the codification in the 2004 IDEA amendments). The second step is required for the retrospective remedies available under the IDEA, but not for the discretionary adjudicative option of purely prospective orders based on *id.* § 1415(f)(3)(E)(iii). See, e.g., Perry A. Zirkel, *Adjudication under the Individuals with Disabilities Education Act: Explicitly Plentiful Rights But Inequitably Paltry Remedies*, 56 CONN. L. REV. 201 (2023).

8. *Andrew F. v. Douglas Cnty. Sch. Dist.* RE-1, 580 U.S. 386, 399 (2017) (requiring the IEP to be “reasonably calculated to enable a child to make *progress* appropriate in light of the child’s circumstances” (emphasis added)).

9. 200 F.3d 341 (5th Cir. 2000).

10. *Id.* at 347 (citing *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247–48 (5th Cir. 1997). These four-factors are (1) the program is individualized on the basis of the student’s assessment and performance; (2) the program is administered in the least restrictive environment; (3) the services are provided in a coordinated and collaborative manner by the key “stakeholders”; and (4) positive academic and non-academic benefits are demonstrated. *Id.* at 348 (citing *Michael F.*, 118 F.3d at 253). The Fifth Circuit has ruled that its long-standing four-factor analysis conformed to the *Andrew F.* substantive standard for FAPE. See, e.g., *E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765, 360 Educ. L. Rep. 619 (5th Cir. 2018).

11. *Bobby R.*, 200 F.3d at 349 (emphasis added).

12. *Id.* In first identifying various provisions of the IEP, including speech therapy, Alphabetic Phonics (AP) services, and seven modifications (e.g., highlighted and taped texts), then agreeing with the less than “careful[.]” analysis of the lower court about its singling out of speech therapy and AP services as significant, the Fifth Circuit did not clearly show the criteria or reasons for this determination and whether it differed from a determination of substantial. *Id.* at 344, 348. Moreover, in the accompany footnote, the court muddied the water as to the role of actual progress:

While consideration of any educational benefit received might arguably seemed to conflate the third and fourth prongs of the [*Michael F.*] inquiry, determination of what are “significant” provisions of an IEP cannot be made from an exclusively *ex ante* perspective. Thus, one factor to consider under an *ex post* analysis would be whether the IEP services that were provided conferred an actual benefit. *Id.* at 349 n.2.

13. *Id.* (emphasis added).

14. *Supra* text accompanying note 11.

and perhaps most importantly, by concluding that the district in this case did not deny FAPE under the over-arching four-factor test based on the child's actual progress under the fourth factor,¹⁵ the court did not make crystal clear whether and, if so, to what extent actual progress was, in effect, a second step of its FTI approach.¹⁶

In the second decision, *Van Duyn v. Baker School District 5J*,¹⁷ the Ninth Circuit cited with apparent approval the FTI materiality approach of *Bobby R.* and related dicta in an Eighth Circuit decision,¹⁸ but then announced its own variation as follows: "A material failure occurs when there is *more than a minor discrepancy* between the services that a school provides to a disabled child and the services required by the child's IEP" (emphasis added).¹⁹ Moreover, the Ninth Circuit clarified actual progress played a discretionary rather than mandatory role in its FTI materiality approach.²⁰

Applied to the facts of the case, which focused on four alleged shortfalls,²¹ the Ninth Circuit found that only one of them to meet its standard of materiality but the district's compliance with the hearing officer's remedial order had compensated for it in the interim.²² Moreover, the court concluded that actual progress played a limited, contributing role in its determination for two of the other three alleged shortfalls.²³ Yet, in neither its formulation nor in its application did the Ninth Circuit provide any specific proportionality as to dividing line of a "minor" deviation other than 50% qualifying as more than minor.²⁴

15. *Id.* at 349–50. Inasmuch as *Andrew F.*, 586 U.S. at 999, effectively endorsed the snapshot approach for applying the substantive standard for FAPE, actual progress as compared to reasonably-calculated progress has a limited role for this different dimension from FTI. See, e.g., Perry A. Zirkel, *The "Snapshot" Standard under the IDEA: An Update*, 358 EDUC. L. REP. 767, 769–72 (2018) (pointing out differences among the circuits in applying the snapshot approach to determining the substantive appropriateness of IEPs with regard to the role of actual progress). Similarly by way of analogy, the second step for procedural FAPE tends to only require reasonably-calculated progress (or, in partially persisting *Rowley* terminology, "benefit"), with actual progress playing a similar secondary and district-sided role.

16. The overall problem with the Fifth Circuit approach is that it effectively subordinates FTI as part of substantive FAPE. In sifting out FTI for other circuits, which all do not share the four-factor test, it would appear that to the extent that actual progress is specific to the fourth factor, it is not integral to FTI. However, the Fifth Circuit's benefit-connected language in both prefacing (*supra* note 11 and accompanying text) and concluding (*supra* text accompanying note 12) discussion of its FTI formulation and application within the third factor leaves the matter less than settled. In other jurisdictions, the courts have occasionally differentiated the FTI and substantive dimensions of FAPE. See, e.g., *C.B. v. Nazareth Area Sch. Dist.*, 2025 WL 41073 (E.D. Pa. Jan. 6, 2025).

17. 502 F.3d 811, 225 Educ. L. Rep. 136 (9th Cir. 2007).

18. *Id.* at 818, 821–22. The brief dicta in the Eighth Circuit's decision *Neosho R-V School District v. Clark*, 315 F.3d 1022, 1027 n.3 (8th Cir. 2003) confined its analysis to the substantive FAPE standard, while characterizing the *Bobby R.* approach to FTI as specific to "essential," or "necessary," provisions of the IEP.

19. *Van Duyn*, 502 F.3d at 822.

20. *Id.* ("[W]e clarify that the materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. The child's educational progress, or lack of it, may be probative of whether there has been a minor shortfall in the services provided.")

21. *Id.* at 823 (identifying these four shortfalls for the IEP provisions for math instruction, a behavior management plan, work at the student's level, and a self-contained placement).

22. *Id.* The Ninth Circuit concluded that the district's provision of half of the required hours of math instruction constituted was more than a minor shortfall. In concluding that the district corrected this shortfall, the court noted the student's positive progress in math skills as a bolstering factor. *Id.* at 823 n.6.

23. *Id.* at 824–25. Specifically, while citing the interpretive flexibility in the other three provisions as the primary factor, the Ninth Circuit noted the child's actual progress as being one of the various other contributing factors in relation to the behavior management plan and, as applied even less strongly for the other two provisions, that "there is no evidence that his educational progress was hindered as a result of exposure to materials too advanced for him" and the implementation of the self-contained placement "may not have been not quite as beneficial a learning environment." *Id.*

24. *Supra* note 22.

In the third decision, *L.J. v. Broward County School District*,²⁵ the Eleventh Circuit straddled the fence between the *Bobby R.* and *Van Duyn* materiality approaches. After successively referring to the “minor” threshold of *Van Duyn* and the “substantial or significant” qualifier of *Bobby R.*,²⁶ the Eleventh Circuit more specifically explained that “courts must consider implementation failures both quantitatively and qualitatively to determine *how much* was withheld and *how important* the withheld services were in view of the IEP as a whole.”²⁷ Finally, the Eleventh Circuit specified that “[a] child’s actual educational progress (or lack thereof) can be evidence of the materiality of an implementation failure—but it is not dispositive.”²⁸ Indeed, the court tightened both its role and connection in adding the caution that “reviewing courts should not rely too heavily on actual educational progress, at least where a plaintiff has not tied the lack of progress to a specific implementation failure.”²⁹ Finally, the Eleventh Circuit instructed that “[c]umulative analysis is . . . built into the materiality standard itself.”³⁰

Similar to *Bobby R.* and *Van Duyn*, the *L.J.* court was less than rigorous and specific in its application of its materiality standard. The court neither specified the proportion of withheld services nor the importance of their underlying IEP provisions. Instead, the Eleventh Circuit dismissed some of the alleged “failures” as lacking a specific requirement in the IEP.³¹ The court disqualified the other “failures” as explainable or attributable to the student’s continuing absenteeism despite the school’s extensive efforts to facilitate his attendance.³² In doing so, the court limited the role of the progress factor when “another educational impediment—here, repeatedly missing instruction and educational services—readily explains the lack of progress.”³³ Similarly, the court rejected the alleged cumulative material effect in this case because “the record suggests that the school is not to blame for [the child’s] extensive absences.”³⁴ Again, questions remain as to application of this hybrid approach, including the

25. 927 F.3d 1203, 367 Educ. L. Rep. 103 (11th Cir. 2017). In the interim between 2007 and 2019, as cited in the concurring opinion in *L.J.*, two other circuits addressed FTI. *Sumter Cnty. Sch. Dist. v. Heffernan*, 642 F.3d 478, 484, 268 Educ. L. Rep. 668 (4th Cir. 2011); *Couture v. Bd. of Educ. of Albuquerque Pub. Schs.*, 535 F.3d 1243, 1252, 235 Educ. L. Rep. 721 (10th Cir. 2008). However, inasmuch as each of these decisions cited both *Bobby R.* and *Van Duyn* without any differentiating discussion, *L.J.* seems to be a better representation here of this intermediate category.

26. *Id.* at 1212–13.

27. *Id.* at 1214. Introducing this hybrid approach, the Eleventh Circuit further clarified that “the focus in implementation cases should be on ‘the proportion of services mandated to those actually provided, viewed in context of the goal and import of the specific service that was withheld.’ . . . (citing *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011)).” *Id.*

28. *Id.* In doing so, the Eleventh Circuit not only explicitly cited *Van Duyn* for support but also implicated *Bobby R.* in adding that actual progress or the lack of it “is merely one piece of evidence courts may use in assessing whether a school failed to implement substantial or significant provisions of the IEP.” *Id.* The Eleventh Circuit also clarified the direct analogy to substantive FAPE by citing the similarity of *Andrew F.* that “outcome evidence of success—or failure—in achieving certain outcomes is not outcome-determinative here any more than it is in a content case.” *Id.*

29. *Id.*

30. *Id.* at 1215. More specifically, the court offered this explanation:

[R]eviewing courts must consider the cumulative impact of multiple implementation failures when those failures, though minor in isolation, conspire to amount to something more. In an implementation case, the question is not whether the school has materially failed to implement an individual provision in isolation, but rather whether the school has materially failed to implement the IEP as a whole. *Id.*

31. *Id.* at 1216–17 (identifying the examples of behavior intervention plan contents, math referral, technology evaluation, study guide contents).

32. *Id.* at 1217–19 (identifying the examples speech and occupational therapy services).

33. *Id.* at 1219.

34. *Id.* at 1220.

relative weighting of the quantitative and qualitative approaches when they do not point in the same direction.³⁵

As a result of these three leading decisions, the competing approaches appear to represent two polar positions, one qualitative (*Bobby R.*) and the other quantitative (*Van Duyn*),³⁶ and a broad intermediate category that appears to embrace both of them either on a hybrid basis (*L.J.*) or on an undifferentiated basis.³⁷

The Appendix, which consists of a table followed by separate endnotes, canvasses the case law that appear to fit within each of these three approaches for each of the circuits, with the understanding that the boundaries for each approach are thus far blurry rather than bright lines. Moreover, readers should check the citations for their jurisdiction to make sure they are current, complete, and properly placed.

Within the Appendix, the following clarifications apply to the purposely brief entries:

- (1) The major exclusions from coverage are (a) the case law prior to *Bobby R.*;³⁸ (b) the court decisions that cited one or more of these leading decisions but did not specifically apply FTI;³⁹ (c) the court decisions that did not cite FTI case law but ruled against an FTI claim by finding sufficient implementation without specifically addressing any standard;⁴⁰ and (d) court rulings concerning FTI under Section 504 rather than under the IDEA.⁴¹
- (2) The abbreviated case entries in the table at the federal appellate level are in the upper row for each circuit, whereas those at the lower court level are in the lower row, and those that are not officially published are in smaller font.⁴²

35. See, e.g., *Joaquin v. Friendship Pub. Charter Sch.*, 2015 WL 5175885 (D.D.C. Sept. 3, 2015) (recognizing the tension between *Bobby R.* and *Van Duyn*).

36. For the quantitative and qualitative characterizations, see *supra* note 27 and accompanying text. The following excerpt provides a relatively rare example of its specific application, which is within the mixed category and which includes the actual progress, or benefit, factor:

Here, [the child] receives 97% of the hours required by his IEP. Quantitatively, a 3%, or ten minute per day deviation is not a material to [his] IEP. Qualitatively speaking, Plaintiff failed to provide any evidence or testimony demonstrating that these ten minutes per day of instruction was important to achieving the goals set out in [his] IEP. At no point during the Due Process hearing did Plaintiff even attempt to argue that the missing minutes deprived [him] of any educational benefit, much less all educational benefit.

Savoy v. District of Columbia, 844 F. Supp. 2d 23, 34, 282 Educ. L. Rep. 212 (D.D.C. 2012).

37. For the leading decisions for the undifferentiated subgroup, see *supra* note 25.

38. E.g., *Ross v. Framingham Sch. Comm.*, 44 F. Supp. 2d 104, 117, 119, 134 Educ. L. Rep. 935 (D. Mass. 1999); *Gillette v. Fairland Bd. of Educ.*, 725 F. Supp. 343 (S.D. Ohio 1989), *rev'd on other grounds*, 932 F.2d 551, 67 Educ. L. Rep. 510 (6th Cir. 1991).

39. In addition to the aforementioned *Neosho* decision (*supra* note 18 and accompanying text), a leading category of this exclusion is the case law addressing instead whether FTI is subject to the exhaustion doctrine. E.g., *J.M. v. Francis Howell Sch. Dist.*, 850 F.3d 944, 950, 341 Educ. L. Rep. 52 (8th Cir. 2017); *Levine v. Greece Cent. Sch. Dist.*, 353 F. App'x 461, 464–65 (2d Cir. 2013). Another category, which is less clearly differentiated, is the case law in the Fifth Circuit that cited *Bobby R.* but appeared to do so for substantive FAPE either more generally or specific to the fourth factor of *Michael F. E.g.*, *Washington v. Katy Indep. Sch. Dist.*, 2023 WL 2535273 (5th Cir. Mar. 16, 2023); *B.B. v. Catahoula Parish Sch. Dist.*, 2013 WL 5524976 (W.D. La. Oct. 3, 2013); *D.B. v. Hous. Indep. Sch. Dist.*, 2007 WL 2947443 (S.D. Tex. Sept. 29, 2007).

40. E.g., *Matthews v. Douglas Cnty. Sch. Dist.* RE-1, 2018 WL 4790715 (D. Colo. Oct. 4, 2018); *T.G. v. Midland Sch. Dist.* 7, 848 F. Supp. 2d 902, 922–23, 282 Educ. L. Rep. 425 (C.D. Ill. 2012); *Rosinsky v. Green Bay Area Sch. Dist.*, 667 F. Supp. 2d 964, 986–88, 253 Educ. L. Rep. 256 (E.D. Wis. 2009). The coverage also did not extend to FTI cases that relied on an IDEA regulation that was eliminated several years ago. E.g., *Alex R. v. Forrestville Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 613, 189 Educ. L. Rep. 561 (7th Cir. 2004) (relying on regulation then requiring “good faith” implementation).

41. E.g., *CTL v. Ashland Sch. Dist.*, 743 F.3d 524, 529–31, 302 Educ. L. Rep. 31 (7th Cir. 2014); *Doucette v. Jacobs*, 2022 WL 2704482 (D. Mass. July 12, 2022), *aff'd on other grounds*, 106 F.4th 156, 431 Educ. L. Rep. 445 (1st Cir. 2024).

42. The full citations in the endnotes make further clear the distinction between officially published and not officially published decisions.

- (3) The abbreviated case entries in the table are underlined if the plaintiff-parents were successful for their FTI claims.⁴³
- (4) The bracketed case entries in the table designate decisions that appear to be superseded by a subsequent decision cited for the same circuit.
- (5) The parenthetical entries for the full citations in the endnotes refer to “actual progress” in its broadest sense and role.⁴⁴

Review of the Appendix reveals several findings. First, the majority of the circuits appears to be in the intermediate category, with most of them—unlike *L.J.*—thus far without a clearly differentiated decision at the appellate level. Second, the Fifth and Ninth Circuits respectively account for a long line of subsequent decisions, but they do not squarely address the aforementioned open questions under *Bobby R.* and *Van Duyn*, respectively.⁴⁵ Third, the First and D.C. Circuits also account for a sizeable segment of decisions but divided between two categories and with none at the appellate level. Fourth, as differentiated by underlined entries, the outcomes trend thus far, like in the three leading decisions, is skewed in favor of school districts.⁴⁶ Finally, subject to a case reaching the Supreme Court for a uniform approach, the case law has evolved beyond the seminal stage but still is far from settled not only for the circuits with negligible or split case law but also for the remaining application gaps in the other circuits.⁴⁷

43. The underlining is only partial for four of the case entries. For instance, the Ninth Circuit entry for *Van Duyn* is partially underlined to the extent that the parents prevailed in one of their four claims only for purposes of attorneys’ fees, and the D.C. Circuit’s lower court entry for *S.S.* is partially underlined to the greater extent that the FTI outcomes were mixed.

44. Thus, readers should determine for themselves whether this factor was determinative per a second step analysis or merely contributing as part of a one-step analysis, whether any effect was based on positive progress or instead the lack of it, and whether this factor was instead separable as part of a FAPE dimension other than FTI.

45. For *Bobby R.*, see *supra* notes 14–16 and accompanying text. For *Van Duyn*, see *supra* note 24 and accompanying text.

46. This pro-district outcomes skew is generally more pronounced than that for IDEA court rulings more generally. See, e.g., Perry A. Zirkel & Zorka Karanxha, *Longitudinal Trends in Special Education Case Law: An Updated Analysis*, 37 J. SPECIAL EDUC. LEADERSHIP 42 (2024) (finding an approximate 2:1 outcomes ratio in favor of school districts for judicial rulings under the IDEA for the last 25 years).

47. In addition to the aforementioned (*supra* note 45) open questions for the quantitative and qualitative approaches (and, as a result, the mixed category), is whether, if the outcome is denial of FAPE, the remedy of compensatory education should be respectively quantitative and qualitative (or a relaxed hybrid). See, e.g., Perry A. Zirkel, *The Competing Approaches for Calculating Compensatory Education under the IDEA: An Update*, 339 EDUC. L. REP. 10 (2017).

APPENDIX

The Three Competing Approaches on a Circuit-by Circuit Basis

	<i>Bobby R.</i> (2000) ¹ Qualitative	<i>L.J.</i> (2019) ² Mixed	<i>Van Duyn</i> (2007) ³ Quantitative
1st Circuit	<i>Wanham</i> (D. Mass. 2008) ⁴ <i>Mr. C.</i> (D. Me. 2007) ⁵	<i>Marrerro</i> (D.P.R. 2018) ⁶ <i>Colon-Vazquez</i> (D.P.R. 2014) ⁷ <i>S.D.</i> (D. Me. 2014) ⁸ <i>L.P.</i> (D. Mass. 2012) ⁹ <i>P.K.</i> (D.N.H. 2011) ¹⁰ <i>Doe</i> (D. Mass. 2010) ¹¹ <i>Burke</i> (D.N.H. 2008) ¹²	
2d Circuit	<i>V.M.</i> (N.D.N.Y. 2013) ¹⁴ <i>T.L.</i> (E.D.N.Y. 2012) ¹⁵ <i>D.D-S.</i> (S.D.N.Y. 2011) ¹⁶	<i>A.P.</i> (2d Cir. 2010) ¹³ <i>MB</i> (S.D.N.Y. 2018) ¹⁷ <i>Y.F.</i> (S.D.N.Y. 2015) ¹⁸	
3d Circuit	[<i>Fisher</i> (3d Cir. 2008)] ¹⁹ [<i>Melissa S.</i> (3d Cir. 2006)] ²⁰ <i>G.W.</i> (D.N.J. 2024) ²² [<i>S.W.</i> (D.N.J. 2022)] ²³ [<i>Drummond</i> (E.D. Pa. 2016)] ²⁴ [<i>Williams</i> (E.D. Pa. 2015)] ²⁵ [<i>J.D.G.</i> (D. Del. 2009)] ²⁶ [<i>Damian J.</i> (E.D. Pa. 2008)] ²⁷	<i>Abigail P.</i> (3d Cir. 2023) ²¹ <i>Hempfield</i> (E.D. Pa. 2024) ²⁸ <i>L.B.</i> (D.N.J. 2024) ²⁹	
4th Circuit	[<i>J.P.</i> (E.D. Va. 2006)] ³² [<i>Manalansan</i> (D. Md. 2001)] ³³	<i>Plotkin</i> (4th Cir. 2023) ³⁰ <i>Sumter Cnty.</i> (4th Cir. 2011) ³¹ <i>Mynhier</i> (E.D.N.C. 2025) ³⁴ <i>Reyes</i> (D. Md. 2022) ³⁵ <i>M.N.</i> (E.D. Va. 2018) ³⁶	
5th Circuit	<i>Washington</i> (5th Cir. 2023) ³⁷ <i>Spring Branch</i> (5th Cir. 2020) ³⁸ <i>V.P.</i> (5th Cir. 2009) ³⁹ <i>Bobby R.</i> (5th Cir. 2000) ⁴⁰ <i>L.D.</i> (S.D. Tex. 2024) ⁴¹ <i>Lamar</i> (S.D. Tex. 2021) ⁴² <i>Amanda P.</i> (W.D. Tex. 2020) ⁴³ <i>Candi M.</i> (W.D. Tex. 2019) ⁴⁴ <i>Reyes</i> (W.D. Tex. 2016) ⁴⁵ <i>Corpus Christi</i> (S.D. Tex. 2012) ⁴⁶ <i>Clear Creek</i> (S.D. Tex. 2005) ⁴⁷		
6th Circuit	<i>Woods</i> (6th Cir. 2012) ⁴⁸	<i>S.B.</i> (M.D. Tenn. 2016) ⁴⁹	
7th Circuit	<i>Mt. Vernon</i> (S.D. Ind. 2012) ⁵⁰		<i>B.S.</i> (N.D. Ill. 2025) ⁵¹ <i>Grafton Sch. Dist.</i> (E.D. Wis. 2020) ⁵²

	<i>Bobby R. (2000)</i> ¹ Qualitative	<i>L.J. (2019)</i> ² Mixed	<i>Van Duyn (2007)</i> ³ Quantitative
8th Circuit	<i>Bentonville</i> (W.D. Ark. 2019) ⁵³ <i>P.K.W.G.</i> (D. Minn. 2008) ⁵⁴ [<i>Slama</i> (D. Minn. 2003)] ⁵⁵	<i>Denny</i> (D. Minn. 2017) ⁵⁶ <i>J.L.</i> (E.D. Mo. 2010) ⁵⁷	
9th Circuit			<i>Banta</i> (9th Cir. 2025) ⁵⁸ <i>C.L.</i> (9th Cir. 2016) ⁵⁹ <i>Termine</i> (9th Cir. 2007) ⁶⁰ <i>Van Duyn</i> (9th Cir. 2007) ⁶¹ <i>Washington</i> (5th Cir. 2023) ⁶² <i>M.K.</i> (W.D. Wash. 2025) ⁶³ <i>Placentia-Yorba Linda</i> (C.D. Cal. 2025) ⁶⁴ <i>L.B.</i> (S.D. Cal. 2024) ⁶⁵ <i>Moreland</i> (W.D. Wash. 2024) ⁶⁶ <i>R.J.</i> (C.D. Cal. 2024) ⁶⁷ <i>S.S.</i> (C.D. Cal. 2021) ⁶⁸ <i>J.S.</i> (C.D. Cal. 2020) ⁶⁹ <i>Forest Grove</i> (D. Or. 2018) ⁷⁰ <i>Kent Sch. Dist.</i> (W.D. Wash. 2016) ⁷¹ <i>L.M.H.</i> (D. Ariz. 2016) ⁷² <i>Oskowis</i> (D. Ariz. 2016) ⁷³ <i>Alex U.</i> (D. Haw. 2013) ⁷⁴ <i>Noah D.</i> (D. Haw. 2013) ⁷⁵ <i>S.C.</i> (D. Haw. 2013) ⁷⁶ <i>K.K.</i> (C.D. Cal. 2013) ⁷⁷ <i>M.D.</i> (D. Haw. 2012) ⁷⁸ <i>Dep't of Educ.</i> (D. Haw. 2011) ⁷⁹
10th Circuit		<i>Couture</i> (10th Cir. 2008) ⁸⁰ <i>L.C.</i> (10th Cir. 2005) ⁸¹ <i>Bear</i> (D. Kan. 2023) ⁸² <i>E.C.</i> (D. Kan. 2020) ⁸³ <i>M.S.</i> (D. Utah 2014) ⁸⁴ <i>Gallegos</i> (D.N.M. 2013) ⁸⁵	<i>C.P.C.</i> (D. Colo. 2023) ⁸⁶
11th Circuit		<i>L.J.</i> (11th Cir. 2019) ⁸⁷ <i>Dowling</i> (S.D. Ala. 2022) ⁸⁸ [<i>B.F.</i> (N.D. Ga. 2008)] ⁸⁹	
D.C. Circuit	<i>Garmany</i> (D.D.C. 2013) ⁹⁰ <i>T.M.</i> (D.D.C. 2014) ⁹¹ <i>Wilson</i> (D.D.C. 2011) ⁹² <i>S.S.</i> (D.D.C. 2008) ⁹³	<i>Harris</i> (D.D.C. 2025) ⁹⁴ <i>J.T.</i> (D.D.C. 2025) ⁹⁵ <i>Uhlenkamp</i> (D.D.C. 2023) ⁹⁶ <i>Barber</i> (D.D.C. 2018) ⁹⁷ <i>Montuori</i> (D.D.C. 2018) ⁹⁸ <i>Wade</i> (D.D.C. 2018) ⁹⁹ <i>Middleton</i> (D.D.C. 2018) ¹⁰⁰ <i>Beckwith</i> (D.D.C. 2016) ¹⁰¹ <i>James</i> (D.D.C. 2016) ¹⁰² <i>Holman</i> (D.D.C. 2016) ¹⁰³ <i>Joaquin</i> (D.D.C. 2015) ¹⁰⁴ <i>A.W.</i> (D.D.C. 2014) ¹⁰⁵ <i>Johnson</i> (D.D.C. 2013) ¹⁰⁶ <i>Turner</i> (D.D.C. 2013) ¹⁰⁷ <i>Savoy</i> (D.D.C. 2012) ¹⁰⁸ <i>Banks</i> (D.D.C. 2010) ¹⁰⁹ <i>Catalan</i> (2007) ¹¹⁰	

APPENDIX ENDNOTES

1. *Hous. Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000).
2. *L.J. v. Sch. Bd. of Broward Cnty.*, 927 F.3d 1203, 1213–14 (11th Cir. 2019).
3. *Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007).
4. *Wanham v. Everett Pub. Schs.*, 500 F. Supp. 2d 152, 160 (D. Mass. 2008).
5. *Mr. C. v. Me. Admin. Dist. No. 6*, 2007 WL 4206166 (D. Me. Nov. 28, 2007).
6. *Marrero v. Puerto Rico*, 2018 WL 11507584 (D.P.R. Nov. 13, 2008) (preliminary injunction).
7. *Colon-Vazquez v. Dep't of Educ. of Puerto Rico*, 46 F. Supp. 2d 132, 143–47 (D.P.R. 2014) (preliminary injunction). For further, albeit indirect, support, another lower court in the First Circuit clearly adopted a hybrid approach, but its ruling in favor of the parents was reversed due to the appellate court's conclusion that the IEP did not contain the allegedly non-implemented provision. *Ms. M. v. Falmouth Sch. Dep't*, 2016 WL 3072250 (D. Mass. May 31, 2016), *rev'd*, 847 F.3d 19 (1st Cir. 2017).
8. *S.D. v. Portland Pub. Schs.*, 2014 WL 4681036 (D. Me. Sept. 19, 2014).
9. *L.P. v. Longmeadow Pub. Schs.*, 2012 WL3542581 (D. Mass. Feb. 24, 2012) (included actual progress).
10. *P.K. v. Middleton Sch. Dist.*, 2011 WL 839711 (D.N.H. Mar. 9, 2011).
11. *Doe v. Hampden-Wilbraham Reg'l Sch. Dist.*, 715 F. Supp 2d 185, 198 (D. Mass. 2010) (based on early approach in *Ross* that integrally included actual progress).
12. *Burke v. Amherst Sch. Dist.*, 2008 WL 5382270 (D.N.H. Dec. 18, 2008) (including actual progress).
13. *A.P. v. Woodstock Bd. of Educ.*, 370 F. App'x 202, 205 (2d Cir. 2010).
14. *V.M. v. N. Colonie Sch. Dist.*, 954 F. Supp. 2d 102, 118–19 (N.D.N.Y. 2013).
15. *T.L. v. Dep't of Educ. of N.Y.C.*, 2012 WL 1107652 (E.D.N.Y. Mar. 30, 2012) (citing *Bobby R.* but applying it quantitatively as whether the district “substantially implemented the elements of the IEP” rather than whether it implemented the substantial elements of the IEP).
16. *D.D.S. v. Southold Union Free Sch. Dist.*, 2011 WL 3919040 (E.D.N.Y. Sept. 2, 2011), *aff'd on other grounds*, 506 F. App'x 80 (2d Cir. 2012).
17. *MB v. City Sch. Dist. of New Rochelle*, 2018 WL 1609266 (S.D.N.Y. Mar. 29, 2018) (citing only *A.P.* and “material”).
18. *Y.F. v. N.Y.C. Dep't of Educ.*, 2015 WL 4622500 (S.D.N.Y. July 31, 2015), *aff'd*, 659 F. App'x 3 (2d Cir. 2016).
19. *Fisher v. Stafford Twp. Bd. of Educ.*, 289 F. App'x 520, 524–25 (3d Cir. 2008). *Abigail* superseded this unpublished decision, which did not mention *Van Duyn* but was so cursory in its application that it did not address the differentiation in these approaches.
20. *Melissa S. v. Sch. Dist. of Pittsburgh*, 183 F. App'x 184, 187–88 (3d Cir. 2006). *Abigail* superseded this unpublished decision, which preceded the appearance of *Van Duyn*.
21. *Abigail P. v. Old Forge Sch. Dist.*, 105 F.4th 57, 65 (3d Cir. 2024).
22. *G.W. v. Ringwood Bd. of Educ.*, 2024 WL 2151305 (D.N.J. May 14, 2024). The court cited *S.W.* and other decisions in the *Bobby R.* group but missed the seeming prevailing precedent in *Abigail*. Moreover, its application, including the reference to “minor,” arguably stretches to fit in the mixed group.
23. *S.W. v. Elizabeth Bd. of Educ.*, 2022 WL 807344 (D.N.J. Mar. 17, 2022). *Abigail* superseded this unpublished decision.
24. *Sch. Dist. of Phila. v. Drummond*, 2016 WL1444581 (E.D. Pa. Apr. 12, 2016). *Abigail* superseded this unpublished decision.
25. *Sch. Dist. of Phila. v. Williams*, 2015 WL 13873996 (E.D. Pa. Nov. 20, 2015). *Abigail* superseded this unpublished decision.
26. *J.D.G. v. Colonial Sch. Dist.*, 748 F. Supp. 2d 362, 378–79 (D. Del. 2010). *Abigail* superseded this unpublished decision.
27. *Damian J. v. Sch. Dist. of Phila.*, 2008 WL 191196 (E.D. Pa. Jan. 22, 2008). *Abigail* superseded this unpublished decision.
28. *Hempfield Sch. Dist. v. S.C.*, 2024 WL 384918 (E.D. Pa. Jan. 31, 2024).
29. *L.B. v. Edison Bd. of Educ.*, 2024 WL 261234 (D.N.J. Jan. 24, 2024). This decision failed to cite *Abigail* although seemingly siding with its mixed approach.
30. *Plotkin v. Montgomery Cnty. Pub. Schs.*, 2023 WL 7272102 (4th Cir. Nov. 4, 2023), *cert. denied*, 144 S. Ct. 2564 (2024) (not citing either materiality approach, instead ruling for defendant district based on progress as step 2 of procedural FAPE analysis). Although also not cited in *Plotkin*, two intervening Fourth Circuit decisions similarly rejected FTI claims based on the progress factor, thus still not identifying with either polar FTI approach. *R.F. v. Cecil Cnty. Schs.*, 919 F.3d 237, 247–48 (4th Cir. 2019) (using procedural analysis for change of placement); *O.S. v. Fairfax Cnty. Sch. Bd.*, 804 F.3d 354, 360–61 (4th Cir. 2015) (focusing on actual progress as seeming extension of substantive FAPE).
31. *Sumter Cnty. Sch. Dist. 17 v. Heffernan*, 642 F.3d 478, 484 (4th Cir. 2011) (citing both *Van Duyn* and *Bobby R.* but not clearly following either analysis, instead finding student's actual progress insufficient to disprove the materiality).
32. *J.P. v. Cnty. Sch. Bd. of Hanover Cnty.*, 447 F. Supp. 2d 553, 568–87 (E.D. Va. 2006), *vacated*, 516 F.3d 254 (4th Cir. 2008) (decided prior to availability of *Van Duyn* and unclear as to differentiation from the substantive FAPE analysis).
33. *Manalansan v. Bd. of Educ. of Balt. City*, 2001 WL 939699 (D. Md. Aug. 14, 2001). *Heffernan* superseded this unpublished decision, which preceded the appearance of *Van Duyn*.
34. *Myniher v. Wake Cnty. Bd. of Educ.*, 2025 WL 944743 (M.D.N.C. Feb. 11, 2025).
35. *Reyes v. Bd. of Educ. of Prince George's Cnty. Pub. Schs.*, 2022 WL 971082 (D. Md. Mar. 31, 2022).
36. *M.N. v. Sch. Bd. of Va. Beach*, 2018 WL 717005 (E.D. Va. Feb. 5, 2018).
37. *Washington v. Katy Indep. Sch. Dist.*, 2023 WL 2535273 (5th Cir. Mar. 18, 2023) (including actual progress factor but, like *Bobby R.*, under fourth factor of *Michael F.*).
38. *Spring Branch Indep. Sch. Dist.*, 961 F.3d 781, 796–97 (5th Cir. 2020) (including actual progress factor but, like *Bobby R.*, under fourth factor of *Michael F.*).
39. *Hous. Indep. Sch. Dist. v. V.P.*, 582 F.3d 576, 587, 591 (5th Cir. 2009) (including actual progress factor but, like *Bobby R.*,

under fourth factor of *Michael F.*).

40. *Supra* endnote 1.
41. *L.D. v. Friendswood Indep. Sch. Dist.*, 733 F. Supp. 3d 612, 618–19 (S.D. Tex. 2024).
42. *Lamar Consol. Indep. Sch. Dist.*, 577 F. Supp. 3d 599, 605–08 (S.D. Tex. 2021) (including actual progress).
43. *Amanda P. v. Copperas Cove Indep. Sch. Dist.*, 2020 WL 1866876 (W.D. Tex. Apr. 14, 2020), *aff'd*, 838 F. App'x 104 (5th Cir. 2021). This decision is marginally included, seemingly being on the other side of the blurry line of the aforementioned (*supra* footnote 39) exclusion.
44. *Candi M. v. Riesel Indep. Sch. Dist.*, 379 F. Supp. 3d 570, 586 (W.D. Tex. 2019).
45. *Reyes v. Manor Indep. Sch. Dist.*, 2016 WL 439148 (W.D. Tex. Feb. 2, 2016), *aff'd on other grounds*, 850 F.3d 251 (5th Cir. 2017).
46. *Corpus Christi Indep. Sch. Dist. v. C.C.*, 2012 WL 2064846 (S.D. Tex. June 7, 2012).
47. *Clear Creek Indep. Sch. Dist. v. J.K.*, 400 F. Supp. 2d 991, 996 (S.D. Tex. 2005).
48. *Woods v. Northport Sch. Dist.*, 487 F. App'x 968, 975–76 (6th Cir. 2012) (including lack of meaningful progress).
49. *S.B. v. Murfreesboro City Schs.*, 2016 WL 927441 (M.D. Tenn. Mar. 11, 2016) (including lack of progress).
50. *Mt. Vernon Sch. Corp. v. A.M.*, 2012 WL 3764019 (S.D. Ind. Aug. 29, 2012) (ruling secondarily that the district “failed to implement essential services contained in the IEP”).
51. *B.S. v. Bd. of Educ. of Downers Grove Grade Sch. Dist.* 58, 2025 WL 1518116 (N.D. Ill. May 28, 2025).
52. *Grafton Sch. Dist. v. JLL*, 2020 WL 3843996 (E.D. Wis. July 8, 2020).
53. *Bentonville Sch. Dist. v. Smith*, 2019 WL 291641 (W.D. Ark. Jan. 23, 2019), *dismissed as moot*, 795 F. App'x 992 (8th Cir. 2020).
54. *P.K.W.G. v. Indep. Sch. Dist.*, 2008 WL 2405818 (D. Minn. June 11, 2008) (despite lack of actual progress).
55. *Slama v. Indep. Sch. Dist. No. 2580*, 259 F. Supp. 2d 880, 888–90 (D. Minn. 2003) (applying *Bobby R.* but before availability of *Van Duyn*).
56. *Denny v. Bertha-Hewit Pub. Schs.*, 2017 WL 4355968 (D. Minn. Sept. 29, 2017) (citing both though perhaps relying more on *Bobby R.* than *Van Duyn*).
57. *J.L. v. Francis Howell R-3 Sch. Dist.*, 693 F. Supp. 2d 1009, 1033–34 (E.D. Mo. 2010).
58. *Banta v. Hayashi*, 2025 WL 546353 (9th Cir. Feb. 19, 2025) (including actual progress).
59. *C.L. v. Lucia Mar Unified Sch. Dist.*, 646 F. App'x 524, 525 (9th Cir. 2016); *see also* *F.K. v. Haw. Dep't of Educ.*, 585 F. App'x 710, 711 (9th Cir. 2014).
60. *Termine v. William S. Hart Union High Sch. Dist.*, 249 F. App'x 583, 586 (9th Cir. 2007).
61. *Supra* endnote 3.
62. *K.C. v. Everett Pub. Schs.*, 2025 WL 2939267 (W.D. Wash. Oct. 16, 2025).
63. *M.K. v. Issaquah Sch. Dist.*, 2025 WL 1666277 (W.D. Wash. June 12, 2025).
64. *Placentia-Yorba Linda Unified Sch. Dist. v. K.F.*, 2025 U.S. Dist. LEXIS 68195 (C.D. Cal. Apr. 8, 2025).
65. *S.D. v. San Diego Unified Sch. Dist.*, 2024 WL 3797985 (S.D. Cal. Aug. 12, 2024).
66. *Moreland Family v. Mary M. Knight Sch. Dist.*, 2024 WL 3521607 (W.D. Wash. July 24, 2024).
67. *R.J. v. Irvine Sch. Dist.*, 2024 WL 3764594 (C.D. Cal. July 8, 2024).
68. *S.S. v. Bellflower Unified Sch. Dist.*, 2025 WL 4260392 (C.D. Cal. Sept. 3, 2025).
69. *J.S. v. Long Beach Unified Sch. Dist.*, 2020 WL 13616830 (C.D. Cal. Apr. 8, 2020).
70. *Forest Grove Sch. Dist. v. Student*, 2018 WL 6198281 (D. Or. Nov. 27, 2018).
71. *Kent Sch. Dist. v. D.H.*, 2016 WL 6525814 (W.D. Wash. Nov. 3, 2016).
72. *L.M.H. v. Ariz. Dep't of Educ.*, 2016 WL 3910940 (D. Ariz. July 19, 2016) (including actual progress).
73. *Oskowis v. Sedona Oak-Creek Unified Sch. Dist. #9*, 2016 WL 1118038 (D. Ariz. Mar. 22, 2016).
74. *Alex U. v. Dep't of Educ., Haw.*, 2013 WL 6244519 (D. Haw. Nov. 22, 2013).
75. *Noah D. v. Dep't of Educ., Haw.*, 2013 WL 4482495 (D. Haw. Aug. 20, 2013) (including actual progress factor).
76. *S.C. v. Dep't of Educ., Haw.*, 2013 WL 2156475 (D. Haw. May 16, 2013).
77. *K.K. v. Alta Loma Sch. Dist.*, 2013 WL 393034 (C.D. Cal. Jan. 29, 2013).
78. *M.D. v. Haw. Dep't of Educ.*, 864 F. Supp. 2d 993, 1004–07 (D. Haw. 2012).
79. *Dep't of Educ., Haw. v. N.D.*, 2011 WL 7102570 (D. Haw. Dec. 16, 2011), *adopted*, 2012 WL 253119 (D. Haw. Jan. 25, 2012); *Dep't of Educ., Haw. v. C.J.*, 2011 WL 6002621 (D. Haw. Nov. 29, 2011), *adopted*, 2012 WL 253092 (D. Haw. Jan. 25, 2012) (companion remands); *see also* *Dep't of Educ., Haw. v. T.F.*, 2011 WL 4381740 (D. Haw. Aug. 31, 2011), *adopted*, 2011 WL 4375023 (D. Haw. Sept. 19, 2011) (remand).
80. *Couture v. Bd. of Educ. of Albuquerque Pub. Schs.*, 535 F.3d 1243, 1252 (10th Cir. 2008) (within context of Fourth Amendment, not IDEA, claim).
81. *L.C. v. Utah State Bd. of Educ.*, 125 F. App'x 252, 260 (10th Cir. 2005) (no specified standard or approach).
82. *Beer v. USD 512 Shawnee Mission*, 2023 WL 2562416 (D. Kan. Mar. 17, 2023). This decision may alternatively be classified under the *Van Duyn* quantitative approach, because its tentative mixed classification is only indirectly based on its additional citation of the court's prior ruling in *E.C.*
83. *E.C. v. U.S.D. 385 Andover*, 2020 WL 2747222 (D. Kan. May 27, 2020) (including broadened progress factor).
84. *M.S. v. Utah Sch. for the Deaf & Blind*, 2014 WL 4216027 (D. Utah Aug. 25, 2014), *vacated on other grounds*, 822 F.3d 1128 (10th Cir. 2015) (citing *Bobby R.* but applying it as “substantial compliance”).
85. *Gallegos v. Albuquerque Pub. Schs.*, 2013 WL 12335298 (D.N.M. Feb. 28, 2013) (including actual progress factor).
86. *C.P.C. v. Boulder Valley Sch. Dist.*, 2023 WL8831330 (D. Colo. Dec. 21, 2023) (including actual progress factor but not citing *Couture*).
87. *Supra* endnote 2.

88. Dowling v. Limestone Cnty. Bd. of Educ., 2022 WL 17418644 (N.D. Ala. Dec. 5, 2022).
89. B.F. v. Fulton Cnty. Sch. Dist., 2008 WL 4224802 (N.D. Ga. Sept. 9, 2008).
90. Garmany v. District of Columbia, 935 F. Supp. 2d 177, 181–82 (D.D.C. 2014).
91. T.M. v. District of Columbia, 75 F. Supp. 2d 233, 241–42 (D.D.C. 2014).
92. Wilson v. District of Columbia, 770 F. Supp. 2d 270, 274 (D.D.C. 2011) (including actual progress).
93. S.S. v. Howard Road Acad., 585 F. Supp. 2d 56, 67–69 (D.D.C. 2008) (mixed outcomes).
94. Harris v. District of Columbia, 2025 WL 2167248 (D.D.C. July 31, 2025) (R&R).
95. J.T. v. District of Columbia, 2025 WL 2029822 (D.D.C. July 21, 2025) (R&R).
96. Uhlenkamp v. District of Columbia, 691 F. Supp. 3d 224, 247–51 (D.D.C. 2023).
97. Barber v. District of Columbia, 2022 WL 22841025 (D.D.C. Dec 9, 2022).
98. Montuori v. District of Columbia, 2018 WL 4623572 (D.D.C. Sept. 26, 2018).
99. Wade v. District of Columbia, 322 F. Supp. 3d 123, 133–35 (D.D.C. 2018).
100. Middletown v. District of Columbia, 312 F. Supp. 3d 113, 145 (D.D.C. 2018).
101. Beckwith v. District of Columbia, 208 F. Supp. 3d 34, 47–51 (D.D.C. 2016).
102. James v. District of Columbia, 194 F. Supp. 3d 131, 139–41 (3d Cir. 2016).
103. *Holman v. District of Columbia*, 153 F. Supp. 3d 386, 389–90 (D.D.C. 2016).
104. Joaquin v. Friendship Pub. Charter Sch., 2015 WL 5175885 (D.D.C. Sept. 3, 2015) (recognizing tension between the two polar approaches, per *Catalan*).
105. A.W. v. District of Columbia, 2014 WL 12884524 (D.D.C. Sept. 19, 2014).
106. Johnson v. District of Columbia, 962 F. Supp. 2d 263, 269 (D.D.C. 2013).
107. Turner v. District of Columbia, 952 F. Supp. 2d 31, 40–42 (D.D.C. 2013).
108. Savoy v. District of Columbia, 844 F. Supp. 2d 23, 34–36 (D.D.C. 2012).
109. Banks v. District of Columbia, 720 F. Supp. 2d 83, 88–89 (D.D.C. 2010) (remanding for specific ruling but citing *Bobby R.* yet focusing on proportionality).
110. *Catalan v. District of Columbia*, 478 F. Supp. 2d 73, 76 (D.D.C. 2007) (“Very few, if any, “provisions” of an IEP will be insignificant or insubstantial”).