

**Common Special Education Issues Arising at the Time of
Graduation**

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1. Applicable State and Federal Laws Regarding Transition Planning.

1. Minnesota Rule 3525.2900: By grade nine or age 14, whichever comes first, the IEP plan shall address the pupil's needs for transition from secondary services to postsecondary education and training, employment, and community living.

For each pupil, the district shall conduct an evaluation of secondary transition needs and plan appropriate services to meet the pupil's transition needs. The areas of evaluation and planning must be relevant to the pupil's needs and may include work, recreation and leisure, home living, community participation, and postsecondary training and learning opportunities. To appropriately evaluate and plan for a pupil's secondary transition, additional IEP team members may be necessary and may include vocational education staff members and other community agency representatives as appropriate.

Secondary transition evaluation results must be documented as part of an evaluation report. Current and secondary transition needs, goals, and instructional and related services to meet the pupil's secondary transition needs must be considered by the team with annual needs, goals, objectives, and services documented on the pupil's IEP.

2. Federal Law: Transition Services: “means a coordinated set of activities for a child with a disability that . . . is designed to be within a **results**-orientated process (old IDEA stated “outcome-orientated”) **that is focused on improving the academic and functional achievement of a child with a disability** to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation .” 34 CFR § 300.43. The IDEA also states that transition services should be, “based on the individual child's needs, taking into account the child's strengths, preferences and interests” and **should include related services, community experiences, the development of employment and other post-school adult living objectives**, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

According to federal regulations the IEP for a student eligible for transition services must include:

- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

34 CFR 300.320(b).

B. Federal Regulations Regarding Graduation Planning.

As a general proposition, the obligation to provide FAPE terminates when a student a student has satisfied the requirements to receive a regular high school diploma. According to federal regulations, the obligation to make FAPE available to all children with disabilities **does not** apply with respect to the following:

* * *

(i) Children with disabilities who have graduated from high school with a regular high school diploma.

(ii) The exception in paragraph (i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.

(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with Sec. 300.503.

(iv) As used in paragraphs (i) through (iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).

34 CFR 300.102(3).

Neither state nor federal laws specifically require the development of a graduation plan. However, federal regulations do require evaluation or “planning” for a student who is slated to be exited from special education. According to federal regulations:

(1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with Sec. 300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is *not* required before the termination of a child's eligibility under this part *due to graduation* from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

34 CFR 300.305(e)(emphasis added).

C. Common Questions That Arise at the Intersection of Graduation and Transition Planning.

➤ **What is the substantive standard by which a transition plan will be measured?**

Lessard v. Wilton, 518 F.3d 18, 49 IDELR 180 (1st Cir. 2008). The parent of an 18 year old child contested the transition plan of her daughter and argued that the appropriateness of transition services must be determined by showing **substantial progress** toward transition outcomes. The Parent essentially argued for a substantive FAPE standard that exceeded *Rowley* (i.e. that the IEP only be “reasonably calculated” to provide educational benefit). However the Court rejected this position and wrote:

The appellants read far too much into Congress's 1997 definition of transition services. It seems obvious to us that the word "process" denotes a praxis or procedure; it does not imply a substantive standard or a particular measure of progress. The adjectival phrase "outcome-oriented" is similarly agnostic with respect to ultimate results; it specifies the perspective that participants in the process should strive to attain but does not establish a standard for evaluating the fruits of that process. . . . For these reasons, we decline the appellants' invitation to defenestrate the *Rowley* standard.

Chuhran v. Walled Lake Consolidated Schools, 20 IDELR 1035 (E.D. Mich. 1993). The Parents of a student with MD who qualified for special education services under OHI challenged a school districts decision to terminate their student’s special education services. The Student had continued to receive special education services two years past the 12th grade. The District had decided to end services for the Student and graduate him after he passed all of his mainstream classes, maintained maximum physical functioning, and had been provided sufficient vocational and transition services. The Court upheld the District’s decision to graduate the Student. It stated that, “in order to graduate a student with a disability, the student must complete his IEP requirements and otherwise meet requirements for general graduation.” The court acknowledged in its decision that the District was negligent in meeting the letter of the law by not including personnel from a receiving agency (post secondary or supported employment or other employment service) to at least two IEP meetings and by providing no documentation of cooperation with outside agencies for transition purposes was documented in any of the IEPs. However, the Court determined that the Student was appropriately evaluated to determine the student’s future career interests. It further noted that the District had appropriately coordinated an exploration of career opportunities with a local disability organization and with community employers. It further noted that the District provided the Student 1 to 3 computer classes a year and that his teacher talked to the Student frequently about his future and going to college. Finally, the District apparently worked with the state Department of Rehabilitation to ensure that the Student receive counseling and other

vocational assistance. The Court held that, “although these services were not committed to writing, they were certainly adequate.”

Yankton School District, Plaintiff-Appellant v. Harold and Angie Schramm, 23 IDELR 42 (D.S.D. 1995). The Parents of a seventeen years old student with CP challenged the school district’s decision to terminate their child from special education. The Student had a number of physical disabilities that impaired her movement, limited her self help skills so that she required some assistance with daily tasks, and slowed her writing and fine motor skills. However, the student did not have intellectual, learning, or psychological disabilities. In fact she was an excellent student with a high grade point average who was enrolled in the regular college preparatory curriculum at the high school. The Student had a goal of graduating from college with a degree in computer engineering. She also participated in extracurricular and community activities. The Student qualified for special education on the basis of her physical impairment and her subsequent IEPs covered only adaptive physical education, physical therapy, and transportation. Prior to her 16th birthday the school district developed an IEP that “placed nearly all responsibility for transition planning on the [student’s family]. Upon completion of her adaptive physical education at the close of the ninth grade, the Student satisfied all physical education requirements of the District because it did not offer physical education beyond the ninth grade. As a result, the District informed the Student that she no longer qualified for special education and decided to exit the Student from special ed.

The ALJ determined that the District improperly exited the Student from special education because the Student continued to have needs in the area of transition. The ALJ first noted that the District’s prior IEP failed to list a number of services and supports that were provided to the student on a daily basis. The daily services and supports provided to the Student include assistance with moving between classes, getting on and off the school bus, going up and down stairs in the school building, carrying a lunch tray, and setting up the saxophone for band; provision of four different sets of text books (three at various sites in the school building and one at home); and modification of the length and type of written classroom assignments in response to slowness and fatigue caused by writing. The ALJ and the reviewing court both concluded that the Student continued to qualify for special education because the District did provide her with specially designed instruction and related services, even though such instruction and services were not included in the written IEP, and because such continued instructional modifications and services were necessary for the Student to benefit from the regular education curriculum. The Court and ALJ also determined that even if the Student did not require other special education services or related services, transition services under the IDEA can stand alone as a special education program. Finally, the ALJ and reviewing Court both held that the District’s transition planning was inadequate because it only communicated post secondary supports and linkages to those supports. The District was faulted for its failure to develop a coordinated set of activities aim at preparing the Student for postsecondary life.

➤ **Which is the determinative factor for graduation: obtainment of credits or progress on goals?**

Black River Falls School District, 40 IDELR 163 (SEA WI 2004). The Parents of a 19-year-old EBD student who had been diagnosed with ADHD and depression challenged a school district's decision to graduate their student. In part, the Parents argued that the District denied the Student a FAPE because of its inadequate transition planning. The student's transition goal was to attend a four-year college, however, there were no services for that goal other than the services offered to all regular education students. The ALJ stated that "in order to graduate a student with a disability under IDEA, the student must meet the general graduation requirements *and make progress on or complete goals and objectives* contained in the Student's IEPs." The ALJ determined that the Student met the general graduation requirements, but failed to make progress on or complete the IEP goals and objectives.

The ALJ determined there was no plan for the Student to complete the required coursework for college admission, or take a college entrance examination. The ALJ held that the district did not provide the student services, consistent with his evaluation, for vocational training and independent living skills. The ALJ also determined that the district improperly made its graduation determination on the number of credits the student earned without determining his progress under his IEP. The ALJ ordered the district to provide the student with special education services until he was 21 together with proper transition services.

Palmyra Borough Board of Education and Riverton Borough Board of Education, 40 IDELR 191 (SEA NJ 2003). The District proposed to graduate a 19 year old special education student with Aspergers, ADHD and OCD who was receiving special education services in residential setting. The Parents challenged the District's decision and argued that the Student was not ready for graduation because he had not satisfied the goals and objectives in his IEP. In particular, the parents were concerned that the Student had not achieved the ability to live independently. The parents argued that the district's determination to graduate the student was inappropriate because he had not met the 80 percent proficiency level on his IEP's goals and objectives as required by the residential facility. They also alleged that any success the Student had at an assistive living center was a result of his living in a structured environment. The parents also pointed out that the Student was not ready to graduate because he had not completed a physics class – that was a requirement for graduation for all students.

The ALJ determined that while the Student had done well academically, the District should not graduate the student because he had not yet completed his physics requirement (a class he had been struggling to complete for 18 months). However, the ALJ determined the student could complete his physics, or a substitute science course, outside the residential placement, explaining that the continued residential placement was unnecessary. The ALJ did conclude that the student had made meaningful progress toward independence and self-sufficiency and the district was no

longer responsible for the student's placement after he completed the second quarter of the school year. He determined that the Student had made sufficient meaningful progress and was ready to graduate because he has obtained a reasonable degree of self-sufficiency. The ALJ noted that the IDEA does not require a student to obtain complete self-sufficiency prior to graduation.

***Girard School District*, 37 IDELR 298** (SEA Penn. 2002). The Parent of a disabled child, who was concerned about discontinuation of medical insurance coverage for her child, challenged a school district's decision to graduate her child. The Student's prior IEPs clearly indicated that the completion of credits and not attainment of IEP goals and objectives would determine the Student's graduation eligibility. As a result, the hearing panel upheld the graduation because the Student had met her credit requirements. The panel further found that district's IEP was "far from optimal." However, it concluded that the IEP provided reasonably adequate levels for assessing the student's targeted areas of reading and math and that the student made measurable progress. The panel concluded that the Parent's challenge to the graduation decision was a "sham" devised to protect her continuing insurance coverage. (At least one other ALJ decision has cited Girard for the proposition that by agreement through the IEP the parties can set the standard for graduation rather than apply the general rule that the Student must complete both curriculum requirements and make progress or complete goals and objectives before being eligible to graduate. *See Hartford Public High School District*, 107 LRP 53879 (SEA Conn. 2007).

***Andrew B. v. Bd. of Education of Community H.S.*, 46 IDELR 245** (N.D. Ill. 2006). Even though a 20-year-old student with cerebral palsy wished to continue his high school education after his senior year, an Illinois district did not deny the student FAPE when it graduated him and denied his request the following September to enroll in high school courses. The Court concluded that the district offered the student FAPE, and that its recommendation to graduate the student resulted from careful analysis of the student's progress and educational benefits. The Court noted that the district evaluated the student when he began attending high school as a freshman, and that it developed an IEP that included all necessary services. When evaluating the student's progress during his senior year, the judge observed, the IEP team discussed three options: a program that consisted of both high school instruction and vocational training, a transitional program that focused on life skills, and enrollment in vocational training courses at a local college. The Court found that the "that based on an overall assessment of his individualized education program, the school district and [the IEP team] concluded that [the student] would benefit more from specific vocational training. . ." Because the student needed a high school diploma to attend college courses and had already earned the credits he needed to graduate, the judge determined that the district did not violate the IDEA by graduating the student.

***St. Michael-Albertville Independent School District #885*, 47 IDELR 178** (MDE Complaint Dec. 2006). The school district in this complaint decision prepared an IEP for the student's final year of high school and it identified transition needs related

to job training, community participation, daily living and recreation. After reviewing the student's transcript and the results of a 30-day employment assessment conducted later that year, the district concluded that it had satisfied the student's educational and transition needs. The student's guardian, however, refused to accept the student's high school diploma the following spring.

The MDE found that the district supported its determination that the Student's needs in the five areas of transition had been met, and that the Student met the requirements for graduation. The documentation included present level of performance statements, evaluation reports, letters in the Student's file, and the Student's transcripts. The record showed that the Student had successfully completed the academic requirements of high school maintaining just under a "B" average with almost 75 percent of her coursework being completed in regular education classes. The Student passed the Minnesota reading, math and writing standards and she had progressed in the general curriculum. The MDE determined that the district had no duty to provide transition services when the student's transition needs had already been met. The MDE held that, "because the district has supported its determination that the student's transition needs have been met and the student has met the requirements for graduation, the district is not obligated to propose a post-secondary transition program for the student. . ."

➤ **What is the role of other state agencies in transition planning?**

School districts are required to invite a representative of any participating agency to the IEP team meeting that is likely to be responsible for providing or paying for transition services. 34 CFR 300.321 (b)(3). (The 2006 IDEA regulations removed a provision requiring that: "If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain participation of the other agency in the planning of any transition services.")

Transition planning should not be viewed as the sole providence of the school district. In fact the IDEA specifically states that the Act should not be construed as relieving other participating agencies from their responsibility to provide or pay for transition services. Unfortunately, it has proved difficult for parents or schools to hold county and state agencies to their obligations. Where the outside participating agency fails to provide the transition services described in the IEP, the school district is required to reconvene an IEP meeting to identify alternative strategies to meet the transition objectives for the student. *See* 34 CFR 300.324 (c).

State and federal law do mandate the involvement of additional agencies in transition planning for disabled adults:

Independent Living. Minnesota law establishes a number of obligations on the part of the Commissioner of Human Services and other agencies to provide support disabled adults. *See e.g.*, Minn. Stat. § 252.275 (outlining obligation to provide services for semi-independent living skills).

Employment. The Rehabilitation Act of 1973 requires that each state establish an agency to provide vocational rehabilitation services. Minnesota requires the Commissioner of Employment and Economic Development to provide vocational rehabilitation services to persons with disabilities. See Minn. Stat. § 268A.03. A student is eligible for vocational rehabilitation services if: 1) he or she has a physical or mental impairment, which for such individual constitutes or results in a substantial impediment to employment; and (2) he or she can benefit in terms of an employment outcome from vocational rehabilitation services. 29 USC 706 (8)(A).

- **If a high school student meets all of her other IEP goals and objectives (e.g. SLD and EBD goals and objectives) and the only remaining goals and objectives are transition related, does the Student still qualify for special education services?**

OSEP has addressed the question of whether a student's sole need for specialized instruction is in the area of transition is still eligible for special education services. OSEP has stated that: [if transition instruction] is "specially designed" to meet the unique needs of an individual student, it would be considered "special education." This determination would have to be made on a case-by-case basis by the participants responsible for developing the individualized education program (IEP) for the student. . . . [T]ransition services can be the only special educational services to be provided to the student, provided those services consist of specially designed instruction and can be denominated as "special education" under State education standards. *Letter to Hamilton*, 23 IDEA 271(OSEP 1995).

- **What is a school district's role with respect to student employment?**

In early congressional statements regarding the scope of a school transition planning obligations Congress stated the following:

The Committee wishes to emphasize that the schools are not being asked to do what they are not intended to do. For instance, the schools are not expected to become job placement centers. However, there are many employment and employment related activities which are appropriately provided by and funded through the local education agency. In addition, the schools should facilitate linkage with other public agencies in the transition to independent living, job training, preparation, vocational rehabilitation, and postsecondary education. That is why the committee has taken great care in its choice of the words, "which promotes movement," in the definition of transition services. H.R. REP. 101-544, 11; 1990 USCCAN 1723, 1733.

- **Is a school district required to develop IEP accommodations to assist the Student in attending a post secondary institution?**

Lower Moreland Township School District , 25 IDELR 351 (SEA Penn. 1996). A student with a learning disability who was preparing to graduate and had been accepted at college requested that the District pay for a private evaluation that was requested by the University of Pittsburg as part of the matriculation process. The Parents also sought modifications to the Student’s IEP that would have provided the student additional accommodations for test taking. The ALJ determined that the District was not required to change the student’s IEP or pay for the additional evaluation requested by the college. The ALJ panel emphasized that the Student was doing A to B work at high school and found that the Student did not require the requested testing accommodations added to his IEP. The Panel stated: “the parents sought an optimal special education IEP, which is not required by law. The testing strategies described by District Officials in the IEP is appropriate, though perhaps not the best possible way of planning for a student's needs. It has long been the law that a program of special education and related services merely be free and appropriate--- that which allows a special needs student to participate and make progress in school.” The Panel further wrote; “we see no authority in the regulatory language relating to transition plans that would require a statement of optimal testing [accommodations].”

Letter to Moore , 39 IDELR 189 (OSEP 2002). OSEP has stated that there is no specific requirement under the IDEA that high schools must arrange for all students with disabilities to be tested to determine their eligibility to be considered students with disabilities in college.

➤ **Is a School District’s retention/promotion decision an IDEA/transition issue?**

Letter to Davis-Wellington, 40 IDELR 182 (OSEP 2003). OSEP has stated that Part B of the Individuals with Disabilities Education Act (IDEA) does not specifically address standards for retention or promotion of students with disabilities. Rather, the establishment of standards for promotion and retention for all students, including students with disabilities, is a State and/or local function. Generally, the IDEA would not require that the IEP team make decisions regarding promotion or retention of a child with a disability. However, the IDEA does not prevent a State or local educational agency from assigning this decision-making responsibility to the IEP team. OSEP also note that a retention or promotion decision is not synonymous with a placement decision for IDEA purposes.

➤ **How might the “stay-put” provisions of the IDEA impact graduation decisions?**

Kevin T. v. Elmhurst Community School District, 34 IDELR 202 (N.D. Ill 2001). The Student in this case was a nineteen-year-old man who suffered from multiple disabilities including a learning disability, an attention deficit hyperactivity disorder, and a bi-polar disorder. The Student had qualified for special education services for a number of years. After the 1999-2000 school year the Student’s academic skills were measured as follows: (1) reading between the sixth and seventh grade level; (2) math between the fourth and fifth grade level; and (3) writing skills between the third and fourth grade level. Despite his lack of academic achievement, the District

decided to graduate the Student from high school at the end of the 2000 school year because the District contended that the Student had completed enough credits to graduate.

In May of 2000, a student and his parents requested an administrative hearing to challenge the District's decision to graduate the Student. The District decided to graduate the Student because he had obtained the necessary credits for graduation. The ALJ issued an interim order, pursuant to the "stay put provision" of the IDEA, directing the District to continue paying for the Student's therapeutic day school placement during the pendency of the administrative hearing. The ALJ ultimately determined that the District's decision to graduate the Student was appropriate. As a result, the District terminated its support of the Student's placement at the therapeutic day school. However, the Student continued at the therapeutic school at his parent's expense. The Parent appealed the ALJ decision and requested that the Court on appeal order the continuation of the therapeutic school as the Student's "stay-put" placement. The court sided with parents and returned the Student to the private therapeutic school placement during the pendency of a dispute at the District's expense. The Court stated that when Congress enacted the "stay put" provision, it "very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students . . . from school." The Court noted that the District was seeking to unilaterally graduate the Student against the wishes of his parents. It found the District's position "particularly disingenuous given that [the Student's] reading, writing, and math skills [were] well below that of even a high school freshman."

➤ **Is it possible or appropriate that transition planning begin before grade 9 or age 14?**

Oregon City School District, #62, 23 IDELR 688 (SEA OR 1996). Federal regulations require an IEP team to include transition services for students in the first IEP to be in effect when the Student turns 16 *or at an earlier age when determined appropriate by the Student's IEP team.* Since an IEP is supposed to be individualized, some special education decisions have indicated that transition planning may be appropriate before the age of "transition planning" eligibility.