

MAKING THE TRANSITION: PREPARING FOR LIFE AFTER SPECIAL EDUCATION

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WHAT'S THE POINT?

"To ensure that all children with disabilities have available to them a FAPE...designed to...PREPARE THEM FOR FURTHER EDUCATION, EMPLOYMENT AND INDEPENDENT LIVING."

34 CFR 300.1



TRANSITION SERVICES

- A coordinated set of activities;
- A results-oriented process;
- Academic and functional achievement;
- Based on child's needs, taking into account strengths, preferences and interests; and includes:

And....[see next slide!]



TRANSITION SERVICES: II

- Instruction
- Related services
- Community experiences
- The development of employment and other post-school adult living objectives; and
- If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

34 CFR 300.43.



TRANSITION IN THE IEP (FED. LAW)

- Transition must be addressed in the IEP that is in effect when the child turns 16, **“or younger if determined appropriate by the IEP Team,”**
- Updated annually thereafter, **and must include:**
- “Appropriate measurable postsecondary goals...”
- And the transition services (including **courses** of study) needed to assist in reaching those goals. 34 CFR 300.320.



TRANSFER OF RIGHTS

- Transfer of rights at age of majority.
- Not later than one year before the child reaches the age of majority..
- IEP must include a statement that the child has been informed of the child’s rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under Sec. 300.520.

34 CFR 300.321.



THE TEAM

- If transition is to be discussed, the child must be invited to the meeting.
- Representatives of agencies that are "likely to be responsible" for transition services must be invited, but only with consent.

34 CFR 300.321.



2007 GUIDANCE (FED. LAW)

- You be the Judge!



YOU BE THE JUDGE

- Question: Must an IEP include measurable postsecondary goals based on age appropriate transition assessments for every 16-year-old student with a disability regardless of the student's skill levels relating to education, employment and training?



YOU BE THE JUDGE



- Answer: Yes. Under 34 CFR § 300.320(b), the IEP for each child with a disability, must, beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter, include:
 - (1) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

YOU BE THE JUDGE



- (2) the transition services (including courses of study) needed to assist the child in reaching those goals. This requirement applies, whether or not the child's skill levels related to training, education, and employment are age appropriate. The IEP Team must, however, develop the specific postsecondary goals for the child, in light of the unique needs of the child as determined based on age appropriate transition assessments of the child's skills in these areas

YOU BE THE JUDGE



- Question: May community access skills be included in the IEP as independent living skills?

YOU BE THE JUDGE

○ Answer: It depends. The IEP Team must determine whether it is necessary to include appropriate measurable postsecondary goals related to independent living skills in the IEP for a particular child, and if so what transition services are needed to assist the child in reaching those goals.



YOU BE THE JUDGE

○ Question: If an IEP Team chooses to address transition before age 16 (for example, at age 14) are the same standards required?



YOU BE THE JUDGE

○ Answer: Yes. The regulations provide, at 34 CFR § 300.320(b), that beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP 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



YOU BE THE JUDGE



- (2) the transition services (including courses of study) needed to assist the child in reaching those goals.
- If the IEP Team for a particular child with a disability determines that it is appropriate to address the requirements of 34 CFR § 300.320(b) for a child who is younger than age 16, then the IEP for that child must meet the requirements of 34 CFR § 300.320(b).

YOU BE THE JUDGE

- Question: Section 300.320(b)(1) requires that appropriate postsecondary transition goals be measurable. Must we measure goals once a student has graduated or has aged out?



YOU BE THE JUDGE



- Answer: There is no requirement for public agencies to measure postsecondary goals once a child is no longer eligible for FAPE under Part B of the Act.
- The obligation to make FAPE available does not apply to children who have graduated from high school with a regular high school diploma (34 CFR § 300.102(a)(3)) or to children who have exceeded the mandatory age range for provision of FAPE under State law (34 CFR § 300.102(a)(2)).

SUMMARY OF PERFORMANCE (SOP)



- **Defined:** "a summary of a child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals"?
- Purpose is to provide the child with a summary of the child's academic achievement and functional performance in order to assist the child to transition beyond high school.

Q and A on Transition: 52 IDELR 230.

SUMMARY OF PERFORMANCE

- Must include recommendations on how to assist the child in meeting postsecondary goals.
- SOPs go to those who graduate with a regular diploma, or age out. Does not go to GEDs or alternative diploma students.
- Does not have to include documentation sufficient to obtain accommodations by Vocational Rehabilitation Services Program and/or institutions of higher learning.
- Q and A on Transition: 52 IDELR 230.



LETS LOOK AT THE CASES

○ Lessons Learned



K.C. v. MANSFIELD ISD (N.D. TEX. 2009)



- The court ruled for the school district in a case where parents sought a residential placement based, in part, on allegations that the district failed to provide appropriate transition services.
- The District Court held that the transition plan, which reflected the student's strong interests in fashion and child care, was reasonably calculated to provide FAPE. An occupational assessment conducted by the district showed the student had both a high interest and a high skill level in the fields of fashion, child care, and child development.

K.C. v. MANSFIELD ISD (N.D. TEX. 2009)

- The court concluded that as required by the IDEA the transition plan reflected the student's skills and interests, and included a series of practical goals that would help her transition into life after high school. The court thus held that the district had no obligation to pay for the student's placement in a music academy for students with cognitive disabilities.

ROSINSKY V. GREEN BAY AREA SCHOOL DISTRICT (E.D. Wis. 2009)

- A district court in Wisconsin concluded that the district provided appropriate transition services despite the fact that the district failed to issue written invitations to two outside service providers. The court noted that the parent invited the two and one of them attended all three of the IEP Team meetings at which transition was discussed.



LETTER TO HEATH, 54 IDELR 171 (OSEP 2009)

- OSEP was asked to waive the requirement that IEPs for students in transition must include “measurable postsecondary goals in employment” for students with severe medical conditions and developmental needs. The request also asked that this population of students not be included in the calculation of State Performance Plan Indicator 13 analysis. OSEP noted that the requirement for postsecondary goals comes directly from the statute and cannot be waived.

DRACUT SCHOOL COMMITTEE V. BUREAU OF SPECIAL EDUCATION APPEALS (D.C. MASS. 2010)

- The court upheld an administrative ruling that the school had denied FAPE by providing inadequate transition plans.
- The court held that the transition assessments were inadequate in that they were untimely and failed to address post-secondary education and independent living skills.



DRACUT SCHOOL COMMITTEE V. BUREAU OF SPECIAL EDUCATION APPEALS (D.C. MASS. 2010)

- The IEPs failed to include measurable goals in each of the separate areas required by the law—training, education, employment, and, where appropriate, independent living skills.
- The court also upheld the determination that transition services were inadequate because they did not include experiences in the community and did not adequately address independent living skills.

J.L. v. MERCER ISLAND SCHOOL DISTRICT (9TH CIR. 2009)

- In overturning a District Court ruling in a reimbursement action, the 9th Circuit confirmed that IDEA 1997 did not raise the Rowley basic floor of opportunity standard for determining if an IEP provided FAPE.
- The Circuit Court concluded that if Congress wanted to change the FAPE standard it would have done so by directly changing the definition of FAPE.



LESSARD v. WILTON-LYNDEBOROUGH COOPERATIVE SCHOOL DISTRICT (1ST CIR. 2008)

- The First Circuit clarified the meaning of the term "outcome-oriented process" in the IDEA's definition of transition services. In refuting the parents' assertion that with regard to transition services, the old Rowley standard of "some educational benefit" was no longer applicable, the court stated that the parents "read far too much into Congress's 1997 definition of transition services." The court concluded that an "outcome-oriented process" referred to just that -- *a process*.



BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT NO. 211 v. ROSS (7TH CIR. 2007)

- The Seventh Circuit criticized an Illinois school district for failing to timely draft a transition plan for a high school student with Rett Syndrome. The district explained that it routinely deferred the drafting of transition plans for students who were "not ready to move along."
- However, the court pointed out that a "[n]othing in the [IDEA] statute indicates that the District has discretion whether to include a transition plan in the IEP" prior to a student turning 16 years old.



**BOARD OF EDUCATION OF TOWNSHIP
HIGH SCHOOL DISTRICT NO. 211 V.
ROSS (7TH CIR. 2007)**

○ Despite its dissatisfaction with the school district's efforts, the court nevertheless held that the district's failure to include specific transition plans in the IEP was a no more than a "procedural flaw" and thus "did not result in the denial of a free appropriate public education."

**VIRGINIA S. AND MILTON M. V.
DEPT. OF EDUCATION, STATE OF
HAWAII (D. HAWAII 2007)**

○ A 17-year-old student eligible for services under IDEA had been educated in a private out-of-state school for one year when her parents decided to return their daughter to Hawaii to complete her education. When the transition services portion of the IEP was developed, neither the parents nor the student were interviewed. As a result, the transition plan was, according to the court, "a generic and somewhat vague formula of post-high school goals and services, equally applicable to almost any high school student."



**VIRGINIA S. AND MILTON M. V.
DEPT. OF EDUCATION, STATE OF
HAWAII (D. HAWAII 2007)**

○ The court concluded that the transition plan was "not based on the individual child's needs, [did] not take into account her strengths, preferences, and interests ...[and the department of education] did not comply with the procedural requirements of the IDEA."

○ Still, held the court, the "transition plan's generic goals of high school graduation, attendance at a university or community college, and employment in the community" offered a "basic framework sufficient to ensure that [the student] would receive transition services that benefit her education."

**MARPLE NEWTOWN SCHOOL DIST.
V. RAFAEL N. (E.D. PA. 2007)**



- A federal district court in Pennsylvania agreed with a Spanish-speaking mild to moderately intellectually disabled 17-year-old special education student with untreatable epilepsy that his IEP did not include a meaningful transition plan.
- IEP "goals are vague and do not capitalize on Student's strengths or specific interests."

**MARPLE NEWTOWN SCHOOL DIST.
V. RAFAEL N. (E.D. PA. 2007)**

- "IEPs state generic goals that have remained static from year to year," there were no vocational or independent learning outcomes in the community component of the IEP, there was no component to prepare the student for medical self-monitoring, and the IEPs did not "take into account Student's strengths or preferences." So finding, the court held that the IEP was deficient because it contained no "measurable post-secondary goals related to training, education, employment, and independent living skills."

**SINAN V. SCHOOL DISTRICT OF
PHILADELPHIA (E.D.PA. 2007),
AFFIRMED BY THE 3RD CIRCUIT AT 109
LRP 59299 (2008)**



- According to the parents of a 19-year-old special education student, the district's failure to mention vocational and practical living goals made the transition plan incomplete.
- Observing that "case law does not offer strong support for the Plaintiffs' proposition that the District has an affirmative duty to provide for vocational and practical training in all transition plans, without regard to a student's individual needs and preferences," the court held that "the transition plan's focus on college planning was appropriate given [the student's] needs, preferences and interests at the time."

**SEBASTIAN M. V. KING PHILIP
REGIONAL SCHOOL DISTRICT
(D.C. MASS. 2011)**

○ The court upheld the IEP despite the absence of a stand-alone transition plan. The court noted that transition planning was discussed, and transition services were identified in the IEP and provided.



**TINDELL V. EVANSVILLE-
VANDERBURGH SCHOOL
CORPORATION (S.D.IND. 2011)**



○ The school failed to develop a transition plan for the student on time as required. There were many references to a transition plan at IEP Team meetings, but the plan was not actually developed. The court held that this was a procedural violation, but in this case, did not deprive the student of FAPE. The court upheld the IHO's conclusion that the student's anxiety and mood disorder were such that "no reasonable transition plan could be developed or implemented for him."

REMEMBER THE FAPE FACTORS

○ The Fifth Circuit, in *Cypress-Fairbanks Indep. School District v. Michael F.*, 118 F.3d 245, 253 (5th Cir. 1997), provided a four-factor test to analyze whether a District provided a FAPE:

- 1) Whether the program is individualized on the basis of the student's assessment and performance;
- 2) Whether the program is administered in the least restrictive environment;
- 3) Whether the services are provided in a coordinated and collaborative manner by the key stakeholders; and
- 4) Whether positive academic and non-academic benefits are demonstrated.



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CELEBRATING WALSH, ANDERSON,
30 YEARS GALLEGOS, GREEN
OF SERVICE TO and TREVIÑO, P.C.
PUBLIC EDUCATION ATTORNEYS AT LAW
