

Transition Planning for Students with Disabilities

Center for Technical Assistance for Excellence in Special Education (TAESE)

Presented by:

Isabel Machado, Esq.
Machado Law Group
(732) 540-8276 (tel.)
(732) 540-8296 (fax)
imachado@machadolawgroup.com



This presentation is for informational and discussion purposes only. Nothing herein should be construed as legal advice. Specific facts and circumstances can significantly impact the analysis of law and decisions outlined herein.

Overview

Beginning **no later than the 1st IEP in effect** when the child turns 16, or younger if determined appropriate, 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;
- 2) The ***transition services*** (including courses of study) needed to assist the child in reaching those goals.

34 C.F.R. 300.320(b)(1), (2)

Transition Services

- ***Transition services*** are services that the IDEA requires districts to provide to help transition special education students from school to post-school programs.

34 *C.F.R.* 300.43

Transition Services

- IEP teams may provide transition services earlier than age 16.
- Check your state law:
Federal regulations allow States to require a younger age for transition services, as long as the State notifies each district in the state and the Department of Education.

71 Fed. Reg. 46, 667 (2006).

Transition Services

- Under the Federal Code, **transition services** is a coordinated set of activities for a child with a disability that:
 - Is designed to be within a **results-oriented process**,
 - focused on improving the academic and functional achievement

34 *C.F.R.* 300.43

Transition Services

- facilitates the child's movement from school to post-school activities

Transition to:

- *postsecondary education*
- *vocational education*
- *integrated employment (including supported employment),*
- *continuing and adult education,*
- *adult services,*
- *independent living*
- *or community participation*

34 C.F.R. 300.43

Transition Services

Is based on the **individual child's needs**, taking into account the child's

- **Strengths**
- **Preferences**
- **and Interests**

34 C.F.R. 300.4

Importance of student participation!
These must be addressed!

Transition Services

- 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 *C.F.R.* 300.43

Transition Services

Transition services for children with disabilities may also be special education, if provided as ***specially designed instruction***, or a related service, if required to assist a child with a disability to benefit from special education.

34 *C.F.R.* 300.43

Transition Services

- A student's IEP must include:
 1. **date** the student will begin receiving services
 2. **frequency** the services will be provided
 3. **location** the student will receive the service
 4. how **long** the district will continue to provide the service

34 *C.F.R.* 300.320(a)(7)

IEP Meeting

- 1) The district **must** invite the child with the disability to attend the transition planning IEP meeting.
- 2) If the child does not attend the IEP meeting, the district must ensure that the child's ***preferences and interests*** are considered.

34 C.F.R. 300.21

IEP Meeting

- 3) With the **consent** of the parents, or a child who has reached the age of majority,
- the district **must** invite the representative of any participating agency that will be responsible for providing or paying for transition services.

34 *C.F.R.* 300.21

Who should attend the IEP Meeting?

- In *Letter to Caplan*, Office of Special Education and Rehabilitative Services (March 17, 2008), the Office of Special Education Programs (“OSEP”) indicated that there is **no rule** to determine whether other agencies should attend.
- The district should consider:
 1. If the purpose of the meeting will be the consideration of the postsecondary goals;
 2. Whether the parent has consented; and
 3. Whether the agency will be responsible for funding or providing the transition services.

Novato Unified School District

- Failure to Include the Student
 - 18 year old, emotionally disturbed student
 - Parents argued that the student did not receive adequate “transition” planning from the district prior to being awarded a diploma.

SN 886-94(California State Education Agency 1995)

Novato Unified School District

- student was attending a residential school in Utah.
- the IEP provided that the student would be transferred to residential school in California for his final year of high school.

SN 886-94(California State Education Agency 1995)

Novato Unified School District

- However, the district never followed IEP.
- Insisted that the student remain at the Utah placement until he receives his diploma
- The parents argued that the student did not receive the residential placement in California which was promised in the IEP **and was intended to facilitate the student's transition to life in the local community.**

SN 886-94(California State Education Agency 1995)

Novato Unified School District

- District took the position that although they agreed to transfer the student to a facility in California, they determined that the move was not in the student's best interest.
- District felt the student would be emotionally distressed if he was not able to graduate from the Utah placement.
- After graduation, the student returned to California to live with his parents and enrolled in a two-year community college.

SN 886-94(California State Education Agency 1995)

Novato Unified School District

- The Hearing Officer found that district was required to incorporate transition planning into each of the student's IEPs.
- The district was required to base transition activities on the student's needs, **taking into account his preferences and interests.**
- Student was to be invited to the IEP meetings **OR** steps were required to ensure that his preferences and interests were addressed.

SN 886-94(California State Education Agency 1995)

Novato Unified School District

Procedural violations included:

- Sketchy documentation of transition planning
- Lack of formal statement of interagency responsibilities
- Failure to invite the student to IEP meetings

The Hearing Officer found the **procedural violations** did **not** violate the student's right to a FAPE and deprive him of a right to a substantive educational opportunity

Why???????

SN 886-94(California State Education Agency 1995)

Novato Unified School District

- A psychologist, who communicated regularly with the student communicated the student's preferences to the IEP team.
- The Hearing Officer found that the failure to carry out the “*promised*” IEP was a ***significant procedural error***.

SN 886-94(California State Education Agency 1995)

Novato Unified School District

District still provided transition services after the student's graduation, such as . . .

- providing the student with a residential placement with on-site therapy
- a one-to-one aide to learn the public bus system and how to locate his college classes

SN 886-94(California State Education Agency 1995)

Novato Unified School District

- facilitating connections with his college's offices of disabled student services
- a vocational rehabilitation service provider, and the county office of adult mental health
- supplying information about local resources such as adult living options

SN 886-94(California State Education Agency 1995)

Novato Unified School District

- Remedy for Procedural Error
- Hearing Officer ordered
 - an additional semester of residential placement
 - with on-site therapy

as compensatory education for violations by the district.

Gibson v. Forest Hills School District Board of Education

- The student was classified under multiply disabled due to a severe seizure disorder, mental retardation and Pervasive Developmental Disorder.
- District had a difficult and acrimonious relationship with parents
- District failed to include the student in meeting, because ***they were concerned about the student's ability to tolerate a lengthy, contentious IEP meeting.***

655 F. App'x 423 (6th Cir. 2016)

Gibson v. Forest Hills School District Board of Education

- Hearing Officer found that the district failed to provide the student with a FAPE because of deficiencies in her IEP including a lack of reading fluency and math skills goals.
- ***Petitioners were not denied participation in the IEP process*** and they were not prevailing parties because they were partially responsible for the district's difficulty in creating an IEP and provided services to the student.

COOPERATION IS THE CORNERSTONE OF THE IDEA!!!!

655 *F. App'x* 423 (6th Cir. 2016)

Gibson v. Forest Hills School District Board of Education

- Parents appealed to the Ohio Department of Education.
- State Level Review Officer (“SLRO”) found that the District **had** provided a FAPE and the district showed that the student made progress, although it was inconsistent.
 - **Endrew F. standard – same result?????????**

655 *F. App'x* 423 (6th Cir. 2016)

Gibson v. Forest Hills School District Board of Education

- There was also overwhelming evidence that the ***parents*** were included as meaningful participants on the IEP team.
- The parents appealed to the U.S. District Court for the Southern District of Ohio.

655 *F. App'x* 423 (6th Cir. 2016)

Gibson v. Forest Hills School District Board of Education

- District Court found that the district did not invite the student to the meetings where transition services were discussed because the meeting were long and adversarial.
- The district ***violated the mandatory requirement to invite the student*** to the meeting where post-secondary goals would be discussed.
- The District Court found the procedural violations of the district would not have resulted in substantive harm ***had the district taken other steps to ensure the student's preferences and interests were considered.***

655 *F. App'x* 423 (6th Cir. 2016)

Gibson v. Forest Hills School District Board of Education

- Student was not able to answer direct questions about her postsecondary interests the way a person without cognitive disabilities could.

District did not :

- ***Talk to the student on her level about the jobs people do***
- Take her to shadow or assist a person like a librarian at their job.
- Conducted age-appropriate assessments related to post-secondary goals.

This resulted in substantive harm and a denial of FAPE!!!!

655 *F. App'x* 423 (6th Cir. 2016)

Other Agencies

- In the 2006 Part B regulations of the IDEA, the Department of Education explains:

"The Act has never given public agencies the authority to compel other agencies to participate in the planning of transition services for a child with a disability."

71 Fed. Reg. 46,672 (2006)

Other Agencies

- If a participating agency outside of the district fails to provide transition services pursuant to the IEP, the district is required to reconvene the IEP team and identify alternative strategies to meet transition objectives for the student. 34 *C.F.R.* 300.324(c)(1).
- If the agency refuses to provide or pay for special education services, the district is responsible for providing and paying for the services. 34 *C.F.R.* 300.154(a)(2).

Outside Agencies

- A district has the duty to safeguard against the disclosure of personally identifiable information to invited representatives of outside agencies.
- The OSEP instructs that the district must obtain consent every time an agency representative is invited to an IEP meeting.

34 *C.F.R.* 300.9.

Documenting a Transition Plan

- No specific format required.
- Individualized Transition Plan
 - Not required
 - Part of IEP

A Checklist is Not Enough:

- In *Mason City Community School District, SE-110* (Iowa State Educational Agency 1994), the district made plans to graduate a student with cerebral palsy, mild quadriplegia, and adjustment, language, and developmental disorders.

Mason City Community School District

- Checklist is not enough
- student with cerebral palsy, mild quadriplegia, and adjustment, language, and developmental disorders.
- Attempted to graduate student

SE-110(Iowa State Educational Agency 1994)

Mason City Community School District

- District only prepared a checklist.
- Did not contact outside agencies until four months prior to the graduation date.
- IEP team members made inquiries to outside agencies, but no planning took place
- Administrative court held that the district transition plan did not adequately prepare the student to adapt from school to adult life.
- The checklist was inappropriate.

SE-110(Iowa State Educational Agency 1994)

Charter Schools

- Charter schools are also responsible for the development and implantation of their students' transition plans.
- In *Dutkevitch v. Pennsylvania Cyber Charter School*, 439 Fed. Appx. 177 (3d Cir. 2011), the Third Circuit held that neither a Pennsylvania district nor a vocational-technical school discriminated against a student by failing to enroll him in a computer training program.
- The student's online charter school was responsible for providing the student with a FAPE and arranging the student's transition services.
- The parents were denied their request for the district to cover a \$75,000 post-secondary transition program.

Implementation of Transition Services

What if “community experiences, the development of employment, and other post-school adult living objectives are impossible to deliver on due to **demographics, location, or lack of facilities**, i.e., potential employers (their liability position) or to do so intrudes on the source available to another school (neighboring larger town and school)?”

Implementation of Transition Services

- Answer: “Impossibility” does not absolve the district of their responsibility
- If the IEP team determines that services are not needed in one or more of those areas, the student's IEP must include a statement to that effect and the basis upon which the determination was made.

Letter to Bereuter, Office of Special Education and Rehabilitative Services (August 2, 1993)

Implementation of Transition Services

The transition services statement must include three areas:

- instruction
- community experiences
- and the development of employment and other post-school living objectives.

34 *C.F.R.* 300.18(b)(2)

Implementation of Transition Services

- The statement must include, *where appropriate* the acquisition of
 - daily living skills and
 - functional vocational evaluation.

34 *C.F.R.* 300.346(b)(1)

Gallup-McKinley County Schools

The ultimate duty to ensure implementation lies with the district

- Prior 2 year IEPs did not contain any transition **goals and objectives.**
- Transition plan included in the May 2004 IEP did not assign any responsibility to the district for any services or planning but instead placed the responsibility on outside agencies and the student's family.

DPH 0607-03(New Mexico State Education Authority
06/25/07)

Gallup-McKinley County Schools

- May 2005 IEP assigned some responsibility for transition services to district staff, including the special education and counseling departments and the social worker.
- Student's special education teacher and social worker failed to implement the transitional plan in any meaningful way.

DPH 0607-03(New Mexico State Education Authority 06/25/07)

Gallup-McKinley County Schools

- In February 2005, a district diagnostician recommended a transition evaluation be conducted and the student was set to turn 21 in May 2005.

DPH 0607-03(New Mexico State Education Authority
06/25/07)

Gallup-McKinley County Schools

- The New Mexico State Educational Agency determined that implementation of a transition plan, where specific staff responsibilities are designated, is the responsibility of the district.
- It is not the parent's responsibility to prod the district staff into action to ensure implementation.

We are the educational experts!

DPH 0607-03(New Mexico State Education Authority
06/25/07)

Joaquin v. Friendship Public Charter School

Frequent Absences and Transition Services:

- ADHD high school student with sporadic absences
- Weekly schedule did not indicate that he received any of his IEP-mandated transition services.

188 F. Supp. 3d 1 (D.D.C. 2016)

Joaquin v. Friendship Public Charter School

- Parent filed for due process alleging that the district denied student a FAPE.
- District argued that the student's sporadic attendance was a major obstacle to the provision of transition services
- Hearing Officer determined that the district's failure to provide transition services was a mere procedural violation of the IDEA.

188 F. Supp. 3d 1 (D.D.C. 2016)

Joaquin v. Friendship Public Charter School

- U.S. District Court for the District of Columbia held that there was no basis for the Hearing Officer's finding that the district's error was a mere "procedural violation"
- administrative court used the incorrect evidentiary standard which required "***evidence of harm***" resulting from the deprivation of transition services.

188 F. Supp. 3d 1 (D.D.C. 2016)

Joaquin v. Friendship Public Charter School

- The district believed that the student's ***sporadic attendance*** was a major obstacle to the provision of transition services.
- Argued that even if the district provided transition services, G.H. would not have been present to receive transition services.

188 F. Supp. 3d 1 (D.D.C. 2016)

Joaquin v. Friendship Public Charter School

- The District Court held that the court is only concerned with whether the transition services were “**provided**”.

To hold otherwise would be to transform the IDEA into a *protector of outcomes rather than opportunities*; just as a plaintiff cannot prevail on a claim that a duly formulated and implemented IEP brought about no actual educational progress, *the IDEA does not recognize a defense that the proper implementation of an IEP provision would have yielded no incremental benefit.*

- The court held that the district’s failure to provide transition services amounted to a denial of FAPE.

188 F. Supp. 3d 1 (D.D.C. 2016)

Reynolds Sch. Dist.,

Student's Uncertainty is No Excuse:

- Parent alleged that the district failed to provide transition services and planning to ensure employment after graduation.
- District argued that the student's inability to articulate individual interests was the reason they neglected to provide transition planning.
- District maintained that the student's absences during the assessment periods thwarted progress towards a transition plan.

14-054-034 (SEA OR 12/15/14)

Reynolds Sch. Dist.,

- District never completed a **transition assessment**
- Student's parents filed a state complaint alleging the District failed to provide transition services.
- Oregon Department of Education determined that absences do not constitute a good reason for failing to engage in transition planning and assessments.

14-054-034 (SEA OR 12/15/14)

What if Related Services impact transition?

- Related services must also be considered in transition planning.
- In *Dekalb County Sch. Dist. v. M.T.V.*, 446 F.3d 1153 (11th Cir. 2006), a student with a progressive vision condition required vision therapy to receive a FAPE from the district.
- The parents filed a due process complaint alleging that the transition services in the student's IEP were inadequate because they failed to account for vision services.

Dekalb County Sch. Dist. v. M.T.V.

- Administrative and the U.S. District Court for the Northern District of Georgia agreed that the failure to provide vision therapy in anticipation of transition, denied the student a FAPE.
- District appealed to the U.S. Court of Appeals for the 11th Circuit.

446 F.3d 1153 ((11th Cir. 2006)

Dekalb County Sch. Dist. v. M.T.V.

District's position:

- Parent's experts were unqualified
- lower courts erred by ruling based on a "possibility" that the student's vision problem might cause an educational impact at some unknown point in the future.

446 F.3d 1153 (11th Cir. 2006)

Dekalb County Sch. Dist. v. M.T.V.

11th Circuit holding:

- expert's qualifications were irrelevant, there was sufficient additional testimony to support her conclusions
- Parents were able to show that the student's vision problems would significantly worsen over time & interfere with his ability to benefit from his education if he did not receive vision therapy.

446 F.3d 1153 (11th Cir. 2006)

Summary of Performance

- Prior to awarding students with disabilities a diploma, the IDEA requires the district to complete a *summary of performance*. 34 C.F.R. 300.305 (e)(3).
- Summary of performance helps students identify strengths, needs and goals and assist employers or educators by informing them of the student's goals, accommodations, and needs.
- Students may share their summary of performance with colleges, adult agencies, vocational and rehabilitative centers, employers, and others.

Summary of Performance

- The IDEA does not specify which individuals must complete the summary of performance
- Could be completed by transitions counselors, case manager, special education teacher, etc.

71 Fed. Reg. 46,645 (2006).

Summary of Performance

Summary of performance must include:

1. Information about the student's academic achievement.
2. Information about the student's functional performance.
3. Recommendations on how to assist the child in meeting his postsecondary goals.

71 Fed. Reg. 46,645 (2006).

Remember.....

- Conduct transition assessment / transition inventory / interest inventory
- Invite outside agencies
- Invite student or obtain student's preferences / interests
- Individualize transition plan
- Address attendance

Remember.....

- Ensure IEP documents the transition plan with specificity
- Transition plan to be included in the IEP for the year in which student turns 16 (unless state law requires earlier)
- Include Goals for transition
- Finish up with a Summary of Performance (check state model)

Examples

- Life skills
- Job coaching
- Job training
- Social Skills
- Community activities
- Related services with possible future impact, even if not current impact on education

Examples

- College prep courses
- Vocational programs/ training
- Job shadowing
- Coordination with outside agencies
- Assistance in completing job applications / interviews
- Researching local colleges

Questions?

Isabel Machado, Esq.
Machado Law Group
1 Cleveland Place
Springfield, New Jersey 07081

(732) 540-8276 (tel.)
(732) 540-8296 (fax)
imachado@machadolawgroup.com