

IDEA TRANSITION: WHAT YOU NEED TO KNOW

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IDEA TRANSITION: WHAT YOU NEED TO KNOW

- What is transition?
 - including reviewing the IDEA and regulations about transition
- What does the school have to do for transition?
 - What to look for to see if the school is fulfilling its obligations
- What parents should ask for in transition
- Some helpful resources

SPECIAL EDUCATION LAW BACKGROUND

- Individuals with Disabilities Education Act (“IDEA”)
 - 20 U.S.C. §1400 *et seq.*
 - Approximately 130,000 students in Arizona receive special education in Arizona, ages 3-21 (2013 numbers (Source: IDEAdata.org))
 - Regulations: 34 C.F.R. § 300.1 *et seq.*
 - United States Supreme Court, Courts of Appeal and District Court decisions

IDEA HISTORY AND DEVELOPMENT

- Enacted in 1975 as the Education for All Handicapped Children Act.
 - Designed to provide students with disabilities access to a public education
 - 8 million students were being denied access.
 - This informs much of the case law since as a focus on access.
- Renamed the IDEA – amendments in 1997 and 2004 with regulations in 2006

IDEA HISTORY AND DEVELOPMENT

- 2004 version was entitled Individuals with Disabilities Education Improvement Act but its short title is still the IDEA.
 - Some of the “improvement” has not materialized
- Spending clause statute: States agree to comply in exchange for funding. This statute is specifically enforced because it is based on the states’ agreement to accept funds.
- The promise was for the Federal government to pay 40% of the excess cost of educating students with disabilities but current funding is about 16-17%.

IDEA: SIGNIFICANT SECTIONS

- Department of Education and Office of Special Education Programs administers the law. (§ 1402)
 - Issues non-binding but persuasive “letters” about special education policy and district obligations
 - Collects data among other functions
- Significant Sections:
 - Section 1400 – Findings and Purposes
 - Section 1401 – Definitions
 - Section 1412 – State Eligibility – Catch All
 - Section 1414 – Evaluation, Eligibility Determinations, IEPs and Placements
 - Section 1415 – Procedural Safeguards

IDEA: FINDINGS AND PURPOSES

- As part of the IDEA, Congress made a number of “Findings.” Congress found that:
- “education of children with disabilities can be made more effective by (A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom to the maximum extent possible, in order to
- (i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and
- (ii) be prepared to lead productive and independent adult lives, to the maximum extent possible.” (20 U.S.C. § 1400(c)(5)(A) (emphasis added))

IDEA: FINDINGS AND PURPOSES

- As part of the IDEA, Congress made a number of “Findings.” Congress found that:
- “(14) As the graduation rates for children with disabilities continue to climb, providing **effective transition services** to promote successful post-school employment or education is an important measure of accountability for children with disabilities.” (20 U.S.C. § 1400(c)(14))

IDEA: FINDINGS AND PURPOSES

- Congress also told us what the “Purposes” of the IDEA were as of 2004:
- “To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.” (20 U.S.C. § 1400(d)(1)(A))
- The term “further education” was added in the 2004 changes to the IDEA

IDEA: FINDINGS AND PURPOSES

- The purpose changed in 2004 to become more focused on high expectations and better outcomes for students with disabilities.
- Case law has not caught up with this change. Efforts have been made to increase the expectations and standards but much of the school district's duty is guided by the Supreme Court case, *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982).
- Brief summary of main points of decision
 - “basic floor of opportunity”
 - “some educational benefit”
 - Compliance with procedures should lead to compliance with substance of IDEA

IDEA: TRANSITION SERVICES

Definition - Section 1401 (34)

Transition Services. The term 'transition services' means a coordinated set of activities for a child with a disability that—

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and

(C) includes instruction, 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.

IDEA: TRANSITION SERVICES: DEFINITION

- Coordinated set of activities
- Results-oriented process
- Focused on improving the **academic and functional achievement** of the child with a disability to
- Facilitate the child's movement from school to post school activities, including
 - post-secondary education
 - vocational education
 - integrated employment (including supported employment)
 - continuing and adult education
 - adult services
 - independent living or
 - community participation (Section 1401 (34))

IDEA: TRANSITION: WHEN DOES IT BEGIN?

- No later than the IEP in effect when the student will turn 16 (20 U.S.C. § 1414 (d)(1)(A)(i)(VIII)) – “beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter”
- Can begin earlier depending on the student’s needs
- So assume a student has an IEP with an anniversary date of April 7, 2016 and will turn 16 on April 5, 2017, does the 2016 IEP have to include transition services?
 - Yes.
 - The school could potentially agree to meet again before the student turns 16 but the annual IEP should include transition services.

IDEA: TRANSITION: WHO SHOULD BE THERE?

- The standard IEP team plus two “must invites”:
- The student has to at least be invited to any IEP meeting at which transition will be discussed. 34 C.F.R. § 300.321 (b)(1)
 - If the student does not attend the meeting, the school must take other steps to make sure that the student’s preferences and interests are considered. 34 C.F.R. § 300.321 (b)(2)
- “the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.” 34 C.F.R. § 300.321 (b)(3)
 - So vocational rehabilitation for example must be invited.
 - Parent (or student if over 18) consent is required each time for the invitation and sharing of information.

IDEA: TRANSITION: WHAT IS IT BASED ON?

Definition - Section 1401 (34)

- the individual child's needs
- taking into account the child's
 - Strengths
 - Preferences
 - Interests

IDEA: WHAT DOES IT INCLUDE?

Definition - Section 1401 (34)

- Instruction
- Related services
- Community experiences
- The development of employment
- Other post-school adult living objectives and
- Acquisition of daily living skills (when appropriate)
- Functional vocational evaluation (when appropriate)

IDEA: TRANSITION: WHAT DOES IT NEED TO INCLUDE?

- appropriate measurable postsecondary goals
- based upon age appropriate transition assessments
- related to:
 - Training
 - Education
 - Employment, and
 - Independent living skills (“where appropriate”)
 - 34 C.F.R. § 300.320(b)

IDEA: TRANSITION: WHAT DOES IT NEED TO INCLUDE?

- Types of transition assessments
 - Interest Inventories (Career Information System “AzCIS”)
 - Aptitude tests and inventories
 - Rating scales
 - Education & Career Action Plans (“ECAP”)
 - Achievement tests
 - Cognitive testing
 - Assistive technology assessments

IDEA: TRANSITION: WHAT DOES IT NEED TO INCLUDE?

- The issue of whether you can get an independent educational evaluation (“IEE”) does not appear to have been litigated.
- But if you disagree with the assessments, it would seem to make sense to allow an IEE.
 - A Functional Behavior Assessment (“FBA”) is an evaluation that triggers the right to an IEE.
 - Transition assessments can include a functional vocational evaluation.
 - Many of the assessments that can be used include those that you might see in comprehensive evaluations.
- You can request that the school conduct a specific assessment as part of the IEP team.

IDEA: TRANSITION: WHAT DOES IT NEED TO INCLUDE?

- So there needs to at least be one measurable postsecondary goal for
 - Training
 - Education
 - Training and Education may be combined.
 - Employment
 - Not all IEPs will need to include a goal for independent living skills

IDEA: TRANSITION: WHAT IS MEASURABLE?

- The Arizona Department of Education provides examples of what types of post-secondary goals are measurable. These goals would comply with the IDEA.
 - Student will enroll in a plumbing apprenticeship program.
 - Student will audit a choir class at Glendale Community College
 - Student will work full-time as a laborer for a construction company after exiting high school
 - After exiting school, student will live with a roommate in an adult supervised setting
- Keys to Successful Outcomes:
<https://cms.azed.gov/home/GetDocumentFile?id=56310f95aadebe19104893cd>
- Needs to be a goal that will not be completed until after high school and something specific

IDEA: TRANSITION: WHAT DOES IT NEED TO INCLUDE?

- Ideas for developing post-secondary goals:
- http://www.sde.ct.gov/sde/lib/sde/PDF/DEPS/Special/Transition_GO.pdf
- http://www.calstat.org/ISES/ises-webinars/Essential_Life_Skills_for_All_Teens.pdf

IDEA: TRANSITION: WHAT DOES IT NEED TO INCLUDE?

- At least one goal in the IEP – the ones that are being tracked while the student is in school - must be tied to a transition/post-secondary goal.
- How is the current IEP making it more likely that the student will be in a position to attain his or her post-secondary goal.
- Tying the current IEP goal to the post-secondary goal is designed to make sure the school is working on transition now and not just filling in boxes on the IEP.

IDEA: TRANSITION: WHAT DOES IT NEED TO INCLUDE?

- The school does not have to create a new IEP goal for transition. So one of the existing goals can be used for goal tied into the transition services.
- If there is a new transition goal included in the IEP – other than a post-secondary goal – consider asking for 100% accuracy
 - Most of the IEP goals will require the student to complete a task with 80% accuracy.
 - Certain transition activities should require 100% accuracy
 - Example: Safely use public transportation to the mall and back home.

IDEA: TRANSITION: WHAT DOES IT NEED TO INCLUDE?

- It also must include:
 - the transition services
 - (including courses of study) needed to assist the child in reaching those goals
 - The courses of study must align with the post-secondary goals
- (20 U.S.C. § 1414 (d)(1)(A)(i)(VIII)(bb)) ; 34 C.F.R. § 300.320(b)(2)
- Courses of study alone are not going to be enough

IDEA: TRANSITION: WHAT DOES IT NEED TO INCLUDE?

- Can the transition services be on a college campus?
- Yes. But it is an IEP team decision.
- In the Commentary to the Regulations, the Department of Education wrote that IDEA funds can be used for these programs
- “Therefore, if a child’s IEP Team determines that a child’s needs can best be met through participation in transitional programs on college campuses or in community-based settings, and includes such services on the child’s IEP, funds provided under Part B of the Act may be used for this purpose.” 71 Fed. Reg. Vol. 156, p. 46668 (Monday, August 14, 2006).

DOES THE TRANSITION PLAN COMPLY?

- The National Secondary Transition Technical Assistance Center (NSTTAC)
- The NSTTAC is funded by the Department of Education OSEP
- Indicator 13 helps you assess if a transition plan is compliant
- http://transitionta.org/sites/default/files/transitionplanning/NSTTAC_ChecklistFormA.pdf
- NTACT website:
- www.Transitionta.org
- Arizona Department of Education: <http://www.azed.gov/special-education/special-projects/secondary-transition/>

IDEA: SUMMARY OF PERFORMANCE

- Required for students who graduate with a regular diploma or age out of eligibility

- **20 U.S.C. § 1414 (c)(5) Evaluations Before Change in Eligibility.**

(B) Exception.

(ii) Summary of Performance. For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency shall 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.**

IDEA: SUMMARY OF PERFORMANCE

- The Summary of Performance can be used to help
 - Establish eligibility for accommodations in higher education
 - Develop a plan for employment
 - Prepare agencies to deliver services
 - Minimize delays
- The school is not required to include information related to eligibility for other programs.

IDEA: TRANSITION

- The protections of the IDEA including FAPE and educational benefit are really building toward transition.
- The purpose of the law is to prepare students for life after school
- If parents and the schools look at transition with that in mind, it is more likely that an effective transition plan will be put in place.

TRANSITION AND SERVICES AFTER IDEA ELIGIBILITY

- Section 504 of the Rehabilitation Act (“Section 504”):
 - 29 U.S.C. § 794
 - Regulations: 34 C.F.R. §104.1 -104.61
 - Provides protection in elementary and secondary education
 - Also provides protection in higher education after IDEA eligibility ends or for students who were not eligible for IDEA protections

TRANSITION AND SERVICES AFTER IDEA ELIGIBILITY

- The Department of Education's Office of Civil Rights has a helpful guide for transition to post-secondary school and the different obligations.
- <http://www2.ed.gov/about/offices/list/ocr/transitionguide.html#introduction>

QUESTIONS ABOUT SPECIAL EDUCATION LAW

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