

**Transition Services and the IDEA:
What are School Districts' Responsibilities for
Post-Secondary Education and Other Services?**¹

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I. THE APPLICABLE FEDERAL LAW

1. **2006 Part B Regulations, 34 C.F.R. 300.43(a)** – defines transition services as “a coordinate set of activities for a child with disabilities that:
 - (1) 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 postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
 - (2) is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and includes:
 - (i) Instruction;
 - (ii) Related services;
 - (iii) Community experiences;
 - (iv) The development of employment and other post-school adult living objectives; and
 - (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

2. **71 Fed.Reg. 46,579 (2006)**. The definition of ‘transition services’ is written broadly to include a range of services, including vocational and career training that are needed to meet the individual needs of a child with a disability. Decisions regarding transition services must be made on the basis of the child’s individual needs, taking into account the child’s strengths, preferences, and interests.

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² *This presentation is designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that the presenter is not engaged in rendering legal counsel. If legal advice is required, the services of a competent professional should be sought. Melinda Jacobs is licensed to practice law in Tennessee. Ms. Jacobs makes no representation that she is licensed to practice law in any other state.*

3. **34 C.F.R. 300.320(b)**. 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
 - (2) The transition services (including courses of study) needed to assist the child in reaching those goals.
4. **Section 504** does not contain any statutory or regulatory requirements for transition services. Yankton Sch. Dist. v. Schramm, 24 IDELR 704 (8th Cir. 1996).

II. RELEVANT COURT DECISIONS

1. **M.M. v. New York City Dept. of Education**, 65 IDELR 103 (S.D.N.Y. 2015). The parent of an 18-year-old student with autism could not use a New York district's failure to evaluate her son's postsecondary transition needs as a basis for recovering the cost of his unilateral private placement. Holding that the student's IEP included appropriate postsecondary goals and services despite the procedural violation, the District Court affirmed an administrative decision in the district's favor. The court agreed with the SRO that the IEP team had sufficient information about the student's transition needs to develop an appropriate program. In addition to a private evaluation conducted in 2009, the team considered parent input, teacher feedback, and progress and transition reports from the private school the student had attended since 2008. "The progress report ... provided relevant information about [the student's] 'academic and social/emotional functioning and related goals[,] and the transition report provided adequate post-secondary and vocational related information to develop a comprehensive transition plan for the IEP," U.S. District Judge George B. Daniels wrote. As such, the court explained, the district's failure to conduct postsecondary transition assessments did not result in substantive harm or deprive the parent of the right to participate in the IEP process. The court also recognized that the parent had concerns about IEP implementation, which arose out of a conversation that she had with a parent coordinator when visiting the student's proposed school. However, the court found no support for the coordinator's alleged statement that the student would attend a full-day work program because of his age. Relying on an IEP coordinator's testimony about the school's services, the court held that the parent failed to establish a denial of FAPE.
2. **Jefferson County Bd. Of Education v. Lolita S.**, 62 IDELR 2 (N.D. Ala. 2013), *aff'd*, 64 IDELR 34 (11th Cir. 2014). A special education case manager's testimony that the IEP developed for a teenager with an SLD included the "ninth grade goal" for reading helped convince a District Court that the program was not tailored to the student's unique needs. The court held that the district's use of

"stock" goals and services with regard to reading and postsecondary transition planning amounted to a denial of FAPE. U.S. District Judge Karon Owen Bowdre identified several sections of the IEP that reflected a failure to consider the student's specific needs. Not only did the team handwrite the student's name on the document after crossing out the typewritten name of another student, but the case manager testified at the due process hearing that the student's reading goal, which required him to comprehend grade-level materials, was the standard goal for all ninth-graders. "Such a practice flies in the face of the purpose and goals of the IDEA, which require the district to develop an *individualized* program with *measurable* goals," Judge Bowdre wrote. Given that the student performed six years below grade level in reading, the court concluded that the reading goal in the student's IEP was unrealistic. The court also expressed concern about the IEP's failure to include specialized reading instruction so the student could make progress toward the reading goals. In addition, the court pointed out that the district failed to conduct transition assessments of the student. Instead, it developed a transition plan that called for the student to improve his communication skills and participate in a note-taking class that was open to all freshmen. Concluding the IEP denied FAPE with regard to reading and postsecondary transition, the court partially reversed a decision in the district's favor and sent the case back to the IHO with instructions to consider the student's need for compensatory education.

3. **Patterson v. District of Columbia, 61 IDELR 278 (D.D.C. 2013).** The District of Columbia's prompt compliance with an administrative order reported at 60 IDELR 300 helped it to avoid further legal challenges to a 16-year-old girl's postsecondary transition plan. Determining that the revised transition plan was based on age-appropriate assessments and included appropriate postsecondary goals, the District Court held that the parent's challenge of the previous transition plan was moot. U.S. District Judge Rosemary M. Collyer explained that a court cannot hear a case if the alleged violation was resolved by interim events and is unlikely to recur. Because the district resolved the parent's objections to the transition plan, specifically the plan's inclusion of inappropriate goals that were based on a single career interest inventory, the court found that the parties did not present an actual, live dispute. "[The parent does] not present any evidence showing that it can be reasonably expected that [the student] will be subject to an inadequate transition plan in the future," Judge Collyer wrote. Furthermore, the court pointed out that the district's failure to conduct an appropriate assessment or develop appropriate postsecondary goals was a procedural violation that did not result in any educational harm. As the IHO observed at 60 IDELR 300, the student made academic and functional progress despite the defects in her transition plan. The court concluded that the district would be entitled to judgment even if the parent's case was not moot.
4. **Maksym v. Strongsville City Sch. Dist., 61 IDELR 294 (N.D. Ohio 2013).** While the parent of an Ohio student with brain damage and cerebral palsy insisted that his eighth-period placement as an aide in the guidance office two days per week was just "idle time," a District Court concluded that it contributed to his employability skills. The court held that the district adequately addressed the high school senior's postsecondary transition needs and offered him FAPE. To support her claim, the parent pointed to an email sent by the guidance office secretary asking the student's teachers to send work so the student wouldn't "sit

and do nothing." Following a state review officer's decision in the district's favor, the parent appealed. The District Court observed that the determination of whether a student's postsecondary transition services offer him FAPE doesn't hinge on the quality of each component of the services in isolation. Rather, it depends on whether those services, taken in their entirety, are reasonably calculated to enable the child to benefit. While the parent argued that no learning took place during the eighth-period assignment, she failed "to point to any requirement that every minute of every school day must provide the maximum educational benefit," U.S. District Judge Patricia A. Gaughan wrote. Here, the IEP addressed the student's needs by primarily focusing on his functional skills, including reading, math, and vocational skills, to enable him to transition into adult life. The eighth-period placement furthered those goals. Moreover, the student made progress toward his IEP goals throughout the school year. Finally, the district's testimony indicated that the student's participation as an "office aide" at the guidance office provided in-school work experience to foster the student's chances for postsecondary employment. "Although [the parent] argues that some evidence shows that [the student] did not attain these goals due to a lack of structure, the Court cannot say that the IHO erred in relying on the testimony presented by the [district]," Judge Gaughan wrote.

5. **Pape v. Bd. Of Education of the Wappingers Cent. Sch. Dist., 61 IDELR 188 (S.D. N.Y. 2013).** A student who went without postsecondary transition services after the New York ED's vocational education office determined that he exceeded its income requirements could not use Section 504 or Title II to hold his former district responsible for the shortfall. Finding no evidence that the district was deliberately indifferent to the student's needs, the District Court granted the district's motion for judgment. The court first rejected the student's claim that the district failed to comply with an October 2004 due process decision that required it to provide transition services. Noting that the IHO only ordered the district to "thoughtfully consider" the student's need for postsecondary transition services, the court determined the district complied with the order. "Six months after the 2004 IHO Order, the district convened [an IEP meeting], arranged for transitional services through [the vocational education office], and recommended psychiatric and vocational evaluations," U.S. District Judge Edgardo Ramos wrote. The court acknowledged that the vocational education office found the student ineligible for postsecondary transition services based on his parents' income, but pointed out that the student never informed the district about the lack of services. More importantly, the court observed, the student did not demonstrate that the district shifted its obligation to provide transition services because of the student's disability. Absent evidence of intentional discrimination, the student could not prevail on his Section 504 and Title II discrimination claims. The court also granted judgment for the district on the student's Section 504 and Title II retaliation claims, noting that the student did not show that the district's six-month delay in convening the required IEP meeting was retaliatory.
6. **Gibson v. Forest Hills Sch. Dist. Bd. Of Education, 61 IDELR 97 (S.D. Ohio 2013).** An Ohio district's concerns about a high school student's ability to tolerate a lengthy, contentious IEP meeting that addressed issues well above her level of comprehension did not excuse its failure to include her in postsecondary transition planning. Noting that the district took no other steps to ensure that the team considered the student's preferences and interests, the District Court held

that the procedural violation amounted to a denial of FAPE. The court pointed out that the IDEA requires districts to invite students with disabilities to any IEP meeting that will include a discussion of postsecondary goals and transition services. Although the student's IEP meetings tended to be long and adversarial due to the parties' poor relationship, the student's special education teacher conceded that she could have helped the student prepare for an IEP meeting. Furthermore, the court noted that the team could have modified or structured the meeting in a way that made the student's attendance easier. The court recognized that the procedural violation would not amount to a denial of FAPE if the district took steps to ensure the team considered the student's preferences and interests. However, the court pointed out that the district had not conducted age-appropriate transition assessments at the time of the IEP meeting. The court rejected the notion that the student's voluntary choices between classroom tasks that included stapling, shredding documents, and wiping tables provided an accurate picture of her interests and skills. "This informal approach to determining [the student's] postsecondary preferences and interests was not sufficient," U.S. District Judge Susan J. Dlott wrote. The court indicated that it would meet with the parties to determine an appropriate remedy for the flawed transition plan.

Update: Gibson v. Forest Hills Local Sch. Dist. Bd. of Educ., 115 LRP 29041 (S.D. Ohio 2015). The school district was ordered to pay an additional \$27,641 in attorney's fees to the parent's attorneys for the costs of opposing a motion to stay enforcement of the court's previous order to fund up to \$35,398 worth of postsecondary transition services. The court was not amused by the school district's petition, which the district admitted had "virtually no likelihood" of success.

7. **M.Z. v. New York City Bd. Of Education, 61 IDELR 26 (S.D.N.Y. 2013).** Recognizing that an 18-year-old student's transition plan did not specify activities that would help him develop math and science skills, list post-school activities he might join, or identify the individuals responsible for providing his transition services, the District Court nonetheless declined to reimburse the parents for the student's private placement. The court affirmed an SRO's decision that the procedurally deficient transition plan did not result in a denial of FAPE. U.S. District Judge Katherine B. Forrest noted that the SRO based his decision in part on evidence that the student's proposed school had a transition coordinator and a job developer on staff -- evidence that would have been rejected after the 2d U.S. Circuit Court of Appeals' ruling in *R.E. v. New York City Department of Education*, 59 IDELR 241 (2d Cir. 2012). However, even if the SRO erred in relying on retrospective testimony about the services the student would have received, the identified deficiencies did not result in a denial of FAPE or impede the parents' participation in the IEP process. The court observed that a review of the IEP as a whole showed the student would have received FAPE. "As the SRO noted, the IEP contemplated biannual written reports measuring the student's progress toward his transition goals," Judge Forrest wrote. Furthermore, the court pointed out that other sections of the IEP identified individuals responsible for services that were "intimately linked" to the student's transition plan. Determining the student would have received FAPE despite the deficiencies in the transition plan, the court held the district was not responsible for the student's private placement.

- 8. *Carrie I. v. Dept. of Education, State of Hawaii*, 59 IDELR 46 (D. Hawaii 2012).** Even if a teenager with autism and Landau-Kleffner syndrome would have benefited from a public school placement, the Hawaii ED's failure to consider the potential harmful effects of that placement violated the IDEA. The District Court held that the ED's procedural violation, along with its failure to develop an appropriate postsecondary transition plan, required it to continue the student's private placement. Although the IEP team considered the benefits of a public school placement, most notably the opportunity to interact with nondisabled peers, it did not consider how it would address the student's behavioral problems, which included eloping, on a large high school campus situated near two major roads. The court noted that the IEP team's failure to discuss the matter impeded the parent's participation in the IEP process. Furthermore, the court pointed out that the team relied on a prior version of the IDEA when developing the student's transition plan. Instead of merely identifying the agencies responsible for providing transition services, the court explained, the ED should have conducted age-appropriate transition assessments, developed appropriate postsecondary goals, and identified the services needed to reach those goals. "The lack of assessments alone is enough to constitute a lost educational opportunity," U.S. District Judge J. Michael Seabright wrote. Moreover, because the state's vocational rehabilitation division was likely to be responsible for providing or funding the student's transition services, the ED should have invited a representative of that agency to attend the IEP meeting. Concluding that the ED's failure to comport with the IDEA's procedures resulted in a denial of FAPE, the court reversed an administrative decision in the ED's favor.
- 9. *Dutkevitch v. PA Cyber Charter Sch.*, 57 IDELR 32 (3rd Cir. 2011), *cert. denied*, 132 S. Ct. 1750 (U.S. 2012).** The parents of a student with a disability did not get the chance to argue before the U.S. Supreme Court that a Pennsylvania district was responsible for the cost of their son's postsecondary transition program. The High Court declined to review a decision reported at 57 IDELR 32 that the student's online charter school, and not his district of residence, was responsible for transition planning. The 3d Circuit previously held that the charter school was the student's LEA. As such, it was responsible for ensuring that the student received FAPE -- including appropriate postsecondary transition services. The 3d Circuit observed that the district's failure to recommend that the student attend a vocational-technical school was not based on the student's disability. "Rather, [the district] withheld recommendation because it 'was not [the student's] LEA' and thus 'was not required to make sure [the student] received ... computer training,'" U.S. Circuit Judge Dolores Korman Sloviter wrote in an unpublished decision. Similarly, in denying the student's request for an application, the vo-tech program applied the same application policy that it applied to all students seeking to enroll in a vocational school outside of their district. Finding no evidence that the district or the school excluded the student on the basis of disability, the 3d Circuit held that the parents were not entitled to relief.
- 10. *Rodrigues v. Fort Lee Bd. Of Education*, 57 IDELR 152 (3rd Cir. 2011).** Finding no obvious flaws in the description of postsecondary transition services in a high schooler's IEP, the 3d U.S. Circuit Court of Appeals refused to rule that

the IEP violated the IDEA procedurally or resulted in educational harm. In an unpublished opinion, the court affirmed a ruling by the U.S. District Court, District of New Jersey, at 56 IDELR 48, that the district did not deny the student FAPE. The student with cerebral palsy attended general education classes, with various supports, including a dedicated aide. She planned to enter college. The parents alleged in District Court that the IEP's statement of transition services was deficient. The District Court disagreed, and the parents appealed to the 3d Circuit. The 3d Circuit noted that the student's IEPs correctly stated that she desired to enroll in college and set forth the academic requirements for doing so. In addition, her IEP for her senior year included a detailed checklist designed to assist her in transitioning out of high school. Finally, the district provided the student's parents with extensive information about agencies that could further assist the student in making a smooth transition to life after graduation. "In these circumstances, even assuming that the information provided in the IEP was imperfect, we agree with the District Court that [the student] was not deprived of any educational opportunity," the court wrote. The court also rejected the parents' contention that the IEP team was improperly constituted because it lacked an expert on the child's particular disability. The IDEA contains no such requirement, the court observed. Finally, while the student's IEP lacked objectively measurable goals, the District Court did not err in determining that no educational harm resulted from the deficiency, particularly given the student's strong academic performance.

11. K.C. v. Nazareth Area Sch. Dist., 57 IDELR 92 (E.D. Pa. 2011). Despite claiming that their daughter's postsecondary transition services were "too generalized" and "inadequate," the parents of a 20-year-old with Prader-Willi syndrome could not establish their daughter's need for compensatory education. The U.S. District Court, Eastern District of Pennsylvania held that the student's transition services were appropriate. Although the parents' rehabilitation consultant testified that the student's travel training could have been improved, the court explained that the district had no obligation to maximize the student's potential. Instead, the district only needed to ensure that the student's travel training resulted in meaningful benefits. The court pointed out that the student benefited "immensely" from her travel training services. "In particular, [an independent neuropsychologist] noted that [the student] is now able to travel around Philadelphia," U.S. District Judge Eduardo C. Robreno wrote. The court observed that the student received transition services in other areas as well. In addition to participating in employment-related classes, where she learned skills such as résumé writing and job interviewing, the student attended a life skills summer program and participated in a community services club. The court also pointed out that the student made progress on transition goals related to handling and calculating money. Concluding that the student benefited from her transition plan, the court held the district did not err in failing to provide the parents' preferred level of services. The court thus affirmed a due process decision in the district's favor.

12. Tindell v. Evansville-Vanderburgh Sch. Corp., 57 IDELR 71 (S.D. Ind. 2011). Because a teenager with severe anxiety and a pervasive developmental disorder made significant progress toward his transition goals while attending a residential program, a District Court overlooked the fact that an Indiana district failed to have those goals in place by the student's 16th birthday. The court

affirmed an administrative decision that the district provided the student FAPE. Although the student turned 16 in December 2006, the district did not develop transition goals until February 2009 -- three months before the student's high school graduation. The court explained that the delay in transition planning amounted to a procedural violation of the IDEA. However, noting that the student's anxiety prevented him from participating in transition services until he entered the residential program in June 2008, the court agreed that the delay did not result in a loss of educational benefit. More importantly, the court pointed out that the student met or made progress toward his transition goals while attending the residential program. In addition to meeting the academic requirements for graduation, the student was accepted for admission into a community college. The student also obtained information about checking accounts, applied for vocational rehabilitation services, and demonstrated functional and employment-related math skills. The court acknowledged that the student still was unable to use public transportation without assistance, but noted that his IEP team always believed he would need assistance in some areas of adult living. "A school district cannot be required to educate a student to a level of independence that was never contemplated by the parties in the first place," U.S. District Judge Sarah Evans Barker wrote. Concluding that the student satisfied his transition goals as well as the academic requirements for graduation, the court held that the student's graduation was appropriate.

13. Sebastian M. v. King Phillip Reg'l. Sch. Dist., 56 IDELR 204 (D. Mass. 2011).

A District Court held that the parents of a high school student with an intellectual disability failed to establish that their son's IEPs were substantively deficient. Citing evidence that the student received both postsecondary transition planning and meaningful benefit, and would have continued to do so had his parents accepted his 2005 and 2006 IEPs, the court declined to award reimbursement for the cost of a residential program. Among other things, the IEPs provided for independent living skills instruction, social skills instruction, and programs that helped prepare the student for an appropriate job. His parents believed the district wasn't doing enough, citing the student's meltdowns at home. They placed him in a residential program and filed a due process claim, alleging the student was denied FAPE. An IHO dismissed the claim. The parents appealed. On appeal, the District Court rejected the parents' contention that the student's IEPs fell short because they lacked a transition plan. Although an IEP must contain statements of transition services, the court noted, it does not require an IEP to have a stand-alone transition plan as part of an IEP. "Because transition services were mentioned in the IEPs and because transition services were actually provided to [the student], there is no error here based on transition planning," U.S. District Judge Joseph L. Tauro wrote. The court also rejected the parents' argument that the student made no progress under his IEPs. Lack of progress does not necessarily betoken an IEP's inadequacy, the court observed. Moreover, the evidence indicated that the student in fact made strides in his language skills and ability to focus. *Editor's note: The 1st U.S. Circuit Court of Appeals affirmed this decision at 59 IDELR 61.*

14. J.D.G. v. Colonial Sch. Dist., 55 IDELR 197 (D. Dela. 2010). The parent of a student with Down syndrome may have preferred that the middle school student's Delaware district focus on academic instruction over independent living skills, but that did not make the IEP inappropriate, the U.S. District Court,

District of Delaware held. The evidence indicated that the IEP's goals and focus on teaching the student to function independently in the community was justified based on his limited academic potential and his postsecondary transition needs. After the student failed to make progress on his 2007-08 IEP goals, the IEP team decided to stop the focus on rote memorization and repetitive academic drills that his parent preferred. The parent filed a due process complaint challenging the adequacy of the IEP. A hearing officer ruled against her, and the parent appealed. Under *Rowley*, the court noted, districts must offer educational instruction specially designed to meet the unique needs of a student, supported by such services as are necessary to permit the child to benefit from the instruction. The court pointed out that the district offered a small structured class specifically suited to the student's needs, and set goals and provided services that built on his strengths while preparing him for independent living. The court noted that the hearing record lacked evidence that the IEP was inappropriate. "Rather, it demonstrate[d] the parents' belief that [the IEP] is not rigorous enough," U.S. District Judge Sue L. Robinson wrote. Testimony indicated that the parents may not have fully grasped the limited nature of the student's capabilities. However, that was no basis for overturning the IHO's decision. Due to his age and the necessity to transition him into independent living, it was appropriate to shift the IEP's focus.

15. High v. Exeter Twp. Sch. Dist., 54 IDELR 17 (E.D. Pa. 2010). A high school junior with learning disabilities may have had her sights set on college, but that did not invalidate an IEP goal that called for her to read at a sixth-grade level by the end of the year. The U.S. District Court, Eastern District of Pennsylvania held that the goal was reasonable in light of the student's severe deficits. The court acknowledged that the student's transition plan focused on college preparedness, and included activities such as taking placement tests and attending college fairs. Still, the court rejected the parents' claim that the student's IEP goals did not match her transition plan. The court explained that the IDEA does not require a student's transition plan to dictate her IEP goals. "While it may be ideal if a transition plan influences IEP goals, a newly identified transition goal will not change the ability of a child to progress at a higher rate academically," U.S. District Judge Juan R. Sanchez wrote. The court pointed out that when the student returned to the district in 11th grade after two years of private schooling, she was reading at a fourth-grade level. Although the student continued to struggle, she was reading at a sixth-grade level by the end of her junior year. Moreover, the student received a final grade of 100 in algebra, and was writing at a near-collegiate level. Finding that the student made meaningful progress despite her ongoing deficits, the court held that her IEP was appropriate.

16. Rosinsky v. Green Bay Area Sch. Dist., 53 IDELR 193 (E.D. Wis. 2009). Testimony from a student's service providers helped a Wisconsin district to overcome allegations that it failed to offer appropriate transition services. Concluding that the student made progress toward his goal of supported postsecondary employment, the District Court held that the district provided FAPE. The court first addressed the parent's procedural challenges. Although the district did not invite representatives from a county agency to all of the student's IEP meetings, the court noted that the representatives attended the meeting at the parent's invitation. As such, any procedural violation by the district was harmless. Moreover, the evidence showed that the district provided appropriate

written notice of its refusal to include 15 to 20 hours a week of community work experience in the student's IEP. As for the substance of the transition plan, the court rejected the parent's claim that the goal of "increasing independence in the community" was too vague. Because the plan contemplated that the student would be able to work 15 to 20 hours each week in supported employment that focused on his categorizing and sorting skills and required limited customer interaction, the plan contained measurable postsecondary goals. Moreover, the student's work experience coordinator testified about the student's progress. "[The coordinator] noted that [the student] could stay on task longer in a work setting without taking a break, was adjusting to new tasks, and was focused on a task from start to finish," U.S. District Judge William C. Griesbach wrote. Similarly, the student's special education teacher testified that the student made progress in areas relating to his employability skills. Although the parent's expert testified that the student needed a greater variety of work settings, the court pointed out that the expert had not reviewed the student's transition evaluation or educational records. The court thus affirmed an ALJ's decision that the transition plan was appropriate.

- 17. K.C. v. Mansfield Indep. Sch. Dist., 52 IDELR 103 (N.D. Texas 2009).** Allegations that a Texas district disregarded a teenager's interest in music when developing her transition plan were not enough to support a request for tuition reimbursement. 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. As a preliminary matter, the court rejected the parents' argument that the FAPE standard identified in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (U.S. 1982), was no longer valid. Although the parents claimed that the 1997 IDEA amendments imposed a higher standard on school districts, the District Court pointed out that the 5th U.S. Circuit Court of Appeals continues to apply the *Rowley* standard. Turning to the merits of the parents' claim, the court found that the transition plan was appropriate. An occupational assessment conducted in the student's junior year showed that she had both a high interest and a high skill level in the fields of fashion, child care, and child development. "[The student] also had a high interest score in the area of performing arts, but her skill score in this area was in the 'very low' range," U.S. District Judge Terry R. Means wrote. Based on the assessments, the IEP team developed a transition plan that called for the student to work in a clothing store -- a job that she enjoyed and performed well. The transition plan also called for the student to work as a classroom aide in an elementary school music class. While that placement was discontinued the following year due to the student's dissatisfaction with the position, the district included one-to-one music instruction in the student's IEP. The court concluded that 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.
- 18. Virginia S. v. Dept. of Education, State of Hawaii, 47 IDELR 42 (D. Hawaii 2007).** The Hawaii ED did not violate the IDEA when it developed a generic transition plan for a 16-year-old student that could have applied to almost any other high school student. Concluding that the plan "provide[d] a basic framework sufficient to ensure that [the student] would receive transition services

that benefit[ed] her education," the U.S. District Court, District of Hawaii determined that the ED's procedural error was harmless. The court recognized that the district did not consider the student's individual needs, strengths, preferences or interests when it developed the transition plan. However, the court pointed out that the plan identified three goals for the student: graduating high school, attending a college or university, and obtaining employment in the community. "There is no doubt that [the student] would receive educational benefits from the transition services provided," U.S. District Judge J. Michael Seabright wrote. Under the plan, the court observed, the student would receive assistance with the college planning process and the opportunity to explore career options. The court also noted that the IEP contained measurable goals and objectives, and that the ED considered the parents' opinion when deciding the student's placement. Determining that the student's IEP would not result in the loss of an educational benefit, the court affirmed a decision that the district offered the student FAPE.

- 19. *Susquehanna Twp. Sch. Dist. v. Frances J.*, 39 IDELR 5 (Pa. Cmmwlth Ct. 2003).** The district provided private placement for a high school senior who was diagnosed with dyslexia, memory disorder and ADHD. Pursuant to the IEP, the district was also obligated to provide the student with a one-year post-secondary, college prep program. The court agreed with the parents that the district failed to provide the services and therefore denied the student FAPE. When the district claimed the student was ready to graduate, the parents objected, pointing out that he had not received the transitional services. In an attempt to appease the parents, the district prepared a new IEP, which called for a special education placement rather than transitional services. Again, the parents objected. The state court upheld a DP ruling for the parents, not only determining that the district failed to properly implement the IEP, but it also failed to consult with the parents or obtain their consent before changing the transitional services. The court rejected the district's assertion that the IEP only required that it provide the student with "the opportunity and skills" to apply to the college prep program, not to obtain and pay for the placement. Not so, said the court; such a *de minimis* benefit did not meet IDEA requirements. The court ordered the district to reimburse the parents for the year the student spent in the program at their own cost, and to provide transitional services as specified in the IEP as compensatory education.
- 20. *Pace v. Bogalusa City Sch. Bd.*, 34 IDELR 116 (E.D. La. 2001).** The court found nothing to support charges the district denied a student FAPE by failing to provide him with adequate transition services, accommodations or educational benefit. The student and his parent, together with state and local agencies, were given opportunities to participate in transition decisions, and the student made positive academic and nonacademic gains from the district's program. The district satisfied its IDEA obligations by incorporating individual transition plans in the student's IEPs. The student was taught in the LRE because he attended his normally assigned school and was mainstreamed as much as possible with his peers. The district also accommodated the student's physical needs.

III. RECENT DUE PROCESS HEARING DECISIONS

1. **Reynolds Sch. Dist., 115 LRP 3792 (SEA OR 2015).** A student's school absences and uncertainty about what kind of career he wanted were no excuse for an Oregon district's minimal transition services. The student with LD was twice withdrawn from the district due to excessive absences. During his junior year, the district developed an IEP for him that included transition goals and services. However, the teen had little idea of what he wanted to do in life, and the district never completed a transition assessment. The student's parent filed a state complaint, claiming that the district failed to provide transition services in accordance with the IDEA. The Oregon ED noted that no later than the first IEP in effect when a child turns 16, the IEP must contain transition services, including courses of study, designed to aid the student in achieving post-secondary goals. 20 USC 1401(a)(19). The ED first observed that the district failed to provide any transition services until six months after the student turned 16. Next, the ED acknowledged that the district developed transition goals and services, but these were minimal, the ED explained. The IEP stated that the student's goals were to attend community college and work in a job other than retail or food service. It further stated that the services to be provided were taking an art class and working with a transition specialist. Although art was apparently the only elective available, the student had never shown any interest in or aptitude for it, the ED pointed out. In addition, the student met with the transition specialist only once and was simply told to contact the specialist if he needed help applying for college. The district argued that the student's absence from school during the transition assessment periods and inability to articulate his interests prevented it from developing a viable transition plan. But the ED emphasized that "a student's absence does not constitute a good reason for failing to engage in transition planning as transition assessments ... can happen any time based on student availability." The ED concluded that the district failed to provide the student with transition services and a course of study that would help him achieve his post-secondary goals. It ordered the district to take corrective action.
2. **In re: Student with a Disability, 115 LRP 3632 (SEA IN 2015).** The fact that a high school student with an undisclosed disability was not physically present when an Indiana district developed his transition plan was insufficient to establish an IDEA violation. Noting that the transition plan was tailored to the student's interests, the Indiana ED closed the parent's state complaint. According to the parent, the district violated the IDEA by failing to include the 17-year-old in the IEP meeting in which it determined his transition services and goals. The ED explained that, under the IDEA, a district must invite a student to an IEP meeting if the purpose of the meeting is to develop his postsecondary transition plan. In this case, the ED noted, the student was unable to participate in the development of his transition plan because he became ill the day of the IEP meeting. However, the ED opined that the district took other, appropriate steps to ensure that the transition plan helped the student pursue his dream of receiving a high school diploma and attending college. The evidence showed that the IEP team used data from multiple transition assessments, such as the student's areas of strength and his progress in the general education curriculum, to develop his transition services and goals. Moreover, the ED observed that the district conducted a "preferences" interview for the student in order to determine his desires and wishes for postsecondary life. In fact, testimony revealed that staff members helped the student research at least two colleges and helped him request testing accommodations for several college entrance exams, including the SAT and ACT. The district even wrote a letter to the College Board on behalf of the student in

support of his accommodations request, the ED pointed out. It closed the complaint, finding that the district satisfied the IDEA's requirements.

3. **In re: Student with a Disability, 115 LRP 10006 (SEA ILL 2015).** An Illinois IHO found that a compensatory education award was justified for a student who had aged out of special education. The district ceased providing social work services after placing the student with autism in a post-secondary program. The student was terminated from the program after making an inappropriate "gun comment" related to the Sandy Hook, Conn., school shootings and an undisclosed "knife incident." He entered a therapeutic program but was again expelled. Although the district revised his IEP to include social work and counseling services, his parent filed for due process, seeking compensatory education. The student turned 22 while the proceedings were pending. The IHO explained that a former student whose IDEA eligibility has expired may be entitled to compensatory education if the services provided prior to expiration of eligibility were inadequate. The IHO noted that the student didn't receive appropriate behavioral services for more than a year. During that time, the student was terminated from two post-secondary placements. The IHO determined that the district denied the student FAPE and ordered it to provide 10 hours of counseling. In addition, the IHO observed that despite the student's suspensions, terminations, and inappropriate comment about guns, the district failed to properly assess his social, emotional, and behavioral needs or develop more effective interventions. Therefore, an IEE was also warranted as a compensatory service, the IHO concluded. The IHO pointed out that the IEE would guide the district in providing appropriate counseling services, as well as provide the student's family and adult services agencies with important information regarding services and medication.
- 4.

IV. OSEP/OSERS POLICY RULINGS

1. Letter to Dude, 113 LRP 37277 (OSEP 2013). It's up to a student's IEP team whether to include attendance at a college or university as a component of a student's postsecondary transition plan, OSEP informed a school attorney. Whether the district may use Part B funds to cover the cost of the classes, however, hinges on state law. The attorney asked several questions, including whether the IDEA requires districts to include language in a transition plan indicating that a student shall have access to a junior college, college, or university, upon the student's parents' request. Decisions regarding the content of a transition plan belong to the IEP team, including the parent, OSEP observed. The team must consider the student's specific needs, taking into account the student's strengths, preferences, and interests. 34 CFR 300.43(a)(2). However, the team is not obligated to incorporate a particular service into a transition plan simply because the parent or student requests it. Should the IEP team determine that a specific student requires classes at a postsecondary institution, whether as an auditor or for credit, districts must look to whether, under state law, such attendance is considered secondary school education for students in grade 12 or below. "If the IEP Team determines that services in a community, technical, or other postsecondary program are necessary to assist the secondary school student in reaching his/her postsecondary goals and receiving FAPE, and those services are considered secondary school education ... the student's IEP Team could designate those as transition services and the school district could pay for those services with IDEA Part

B funds," OSEP Director Melody Musgrove wrote. On the other hand, OSEP explained, if the state does not consider such attendance to be part of secondary school education, districts in that state may not use Part B funds to pay for it.

2. Letter to Spitzer-Resnick, Swedeen, and Pugh, 59 IDELR 230 (OSEP 2012).

Although segregated employment is not prohibited by the IDEA, IEP teams need to take a hard look at whether it's necessary before placing a student there as part of a transition program. OSEP told a Wisconsin disability rights group that a transition placement, including a work placement, is no different than any other educational placement in the sense that it may not be unnecessarily restrictive. That is, before assigning a student to segregated employment, the IEP team must look at whether there are steps it could take that would enable the student to work alongside nondisabled individuals. "[W]hen an IEP Team includes a work placement as part of the student's transition services, the IEP team must consider, and include in the IEP, as appropriate, any supplementary aids and services needed to enable the student to participate with other students with disabilities and nondisabled students in the work placement," OSEP Director Melody Musgrove wrote. If the student cannot be satisfactorily placed in integrated employment, even with supplementary aids and services, then the IEP team may assign the student to segregated employment if determined appropriate based on the student's individualized needs.

3. Questions and Answers on Secondary Transition, 57 IDELR 231 (OSERS 2011).

Recognizing that postsecondary goals relating to training and education may sometimes overlap, OSERS stated that IEP teams may develop combined postsecondary goals in those areas where appropriate. However, OSERS indicated that postsecondary goals relating to employment must be separate from those relating to training and education. In a revised Q&A on postsecondary transition, OSERS observed that transition plans must include postsecondary goals in the areas of training, education, employment, and, if appropriate, independent living skills. While neither the IDEA nor the Part B regulations define "training" and "education" in the context of postsecondary transition, OSERS noted that the two areas could be interpreted as overlapping in some instances. "For example, for a student whose postsecondary goal is teacher certification, any program providing teacher certification would include education as well as training," OSERS wrote. In determining whether training and education goals overlap, OSERS observed, the IEP team should consider the student's unique disability-related needs and the student's plans after high school. OSERS pointed out that IEP teams are not prohibited from developing separate goals for training and education and that separate goals may be appropriate in some instances. Furthermore, because employment is distinct from training and education, IEP teams cannot combine a student's postsecondary employment goals with training and education goals.

4. Questions and Answers on IEPs, Evaluations, and Reevaluations, 111 LRP 6332 (OSERS 2011).

Even if an IEP team begins planning a student's postsecondary transition services before the student reaches the minimum age under state or federal law, it has the option of developing combined goals for training and education. OSERS noted in a revised Q&A that the statutory and regulatory requirements for transition planning do not depend on the student's age. OSERS observed that postsecondary goals relating to training and education may overlap for some students. For example, a student seeking certification as a teacher would receive education and training in a teacher certification program. In such instances, it

would not be necessary for the IEP team to set forth separate goals for education and training. "If the IEP team determines that separate postsecondary goals in the areas of training and education would not result in the need for distinct skills for the student after leaving high school, the IEP team can combine the training and education goals of the student into one or more postsecondary goals addressing those areas," OSERS wrote. Because the requirements for transition goals and services apply to all postsecondary transition plans, regardless of when the district begins planning, OSERS reasoned that an IEP team could combine goals related to training and employment even if the student has not reached the mandatory minimum age for transition planning. However, OSERS pointed out that the IEP team would need to develop separate goals for employment regardless of whether it combined the student's training and education goals.

5. Letter to Heath, 54 IDELR 171 (OSEP 2009). Districts may not exclude postsecondary employment goals from a student's transition plan based strictly on the nature of the student's disability, OSEP informed a Maryland ED official. When determining what postsecondary goals to address, districts must look to the child's individualized needs, and not exclusively to the severity of the child's medical condition or developmental deficits. The explanation came in response to the official's request that OSEP "waive" the requirement for including a postsecondary goal in employment for students with disabilities who have severe medical conditions and developmental needs. OSEP pointed out that the IDEA implementing regulation at 34 CFR 300.320(b)(1) states that IEPs must include "appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills." The only area districts may leave out when discussing postsecondary goals is independent living skills. 71 Fed. Reg. 46668 (2006). "While including employment goals in the IEPs of some students with severe medical conditions and developmental needs may be upsetting to their parents, the IDEA does not provide an exception for this requirement based on the nature of the child's disability; and OSEP does not have the authority to waive this statutory requirement," Acting Director Patricia J. Guard wrote. OSEP further informed the official that districts and states must continue to include students with severe medical conditions or developmental needs when reporting on their provision of transition services under State Performance Plan Indicator 13.

6. Questions and Answers on Secondary Transition, 52 IDELR 230 (OSERS 2009). Responding to requests for clarification concerning the secondary transition requirements of the 2006 and 2008 Part B regulations, OSERS created a Q&A to shed light on the scope of districts' duties to create summaries of a child's academic achievement and functional performance. OSERS noted that the regulations do not require summaries of performance (SOPs) for students who leave secondary school with a GED credential or alternate diploma. However, states are free to require them under those circumstances. If they do so, OSERS recommended that, to avoid confusion, the LEA notify the student and parents that the student's eligibility does not terminate until he receives a regular diploma or exceeds the age of eligibility. Furthermore, OSERS observed that the SEA must notify OSEP in writing, as well as its LEAs, of the additional requirement, in compliance with 34 CFR 300.199(a)(2). Addressing the required content of an SOP, OSERS noted that the regulations require only that it include recommendations on how to assist the child in meeting his or her postsecondary goals. Beyond that, state and local education officials may determine

appropriate content based on the child's individual needs and postsecondary goals. Furthermore, districts may, but are not required to, include information in the SOP to assist other programs, such as colleges and the Vocational Rehabilitation Services program, to determine the student's eligibility for services or accommodations.

V. LESSONS LEARNED

1. Always make sure to invite representatives from other agencies.
2. Always include the student in the development of his/her transition services plan.
3. Make sure to develop transition goals that are individualized and “special.”
4. Transition services must be based on appropriate transition assessments.
5. Nothing in the IDEA requires LEAs to ensure that every single minute of transition services time is used for productive activities.
6. LEAs are not required to guarantee career success.
7. LEAs are not required to guarantee college admission.
8. Functional and daily living skills may be the focus of some student’s transition services.
9. Transition services may be addressed in the body of the student’s IEP rather than in a separate “Transition Services Plan” document.
10. The FAPE standard applies to the development and implementation of transition services.