

Post Secondary Transition Under IDEA & Section 504

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Housekeeping....

- These slides are intended to provide an update on transition issues.
- State law will create additional requirements not addressed in these slides.
- The presentation is not legal advice, but information about the law.

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Some helpful documents....

- OSERS' "Questions and Answers on Secondary Transition," 57 IDELR 231 (2011).
- OCRs "Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities," September 2011, <http://www2.ed.gov/about/offices/list/ocr/transiti on.html>

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Some helpful documents....

- OCR's "Transition of Students With Disabilities To Postsecondary Education: *A Guide for High School Educators*," March 2011, <http://www2.ed.gov/about/offices/list/ocr/transitioinguide.html>

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IDEA Transition prior to 2004

The President's Commission Report on Excellence in Special Ed, p. 46.

"The Commission finds that transition services are not being implemented to the fullest extent possible and that meaningful results do not happen. **IDEA's federal requirements are too complex for educators, students, parents and others (such as vocational rehabilitation program counselors) to understand** what the law requires and when it is required."

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IDEA Transition after 2004

20 U.S.C. 1401(c)(14)

"[a]s the graduation rates for children with disabilities continue to climb, providing effective transition services to promote a successful post-school employment or education is an important measure of accountability for children with disabilities."

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IDEA Transition after 2004

20 U.S.C. 1401(d)(1)(A).

One of Congress' stated purposes in IDEA 2004 was

"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."

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What are transition services?

34 C.F.R. § 300.43

"(a) Transition services means a **coordinated set of activities** for a child with a disability 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"

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What are transition services?

34 C.F.R. § 300.43

"(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."

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What are post-school activities?
34 C.F.R. § 300.43

These activities include: “postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.”

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When are transition services required in the IEP? 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...”

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IEP requirements 34 C.F.R. § 300.320(b).

What must be included in the IEP?

“(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.”

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A stand-alone Transition Plan required?

Sebastian M. v. King Phillip Regional Sch., 56 IDELR 204 (D.C. MASS. 2011), *aff'd*, 59 IDELR 61 (1st Cir. 2012).

- “Plaintiff’s argue that because the proposed IEPs did not contain a transition plan for Sebastian, the IEPs were not reasonably calculated to provide a FAPE.”

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A stand-alone Transition Plan required?

Sebastian M. v. King Phillip Regional Sch., 56 IDELR 204 (D.C. MASS. 2011), *aff'd*, 59 IDELR 61 (1st Cir. 2012).

- “But the administrative record makes clear that transition planning was discussed at all of Sebastian’s team meetings. And although an IEP must contain statements of transition services, the IDEA does not require a stand-alone transition plan as part of the IEP.... there is no error here based on transition planning.”

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Are Postsecondary Goals required in *all* listed areas? *Commentary, p. 46668*

- The “Act requires a child’s IEP to include measurable postsecondary goals in the areas of training, education, and employment, and where appropriate, independent living skills. Goals in the area of independent living skills are required only if appropriate.”

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FAPE & lack of transition assessment.

Carrie I. v. Hawaii DOE, 59 IDELR 46 (D.C. HI 2012).

- No “transition assessments related to training, education, employment, and where applicable, independent living skills” were conducted for a 19-year old student with autism.
- The school seemed to be relying on pre-2004 IDEA requirements. That’s a problem...

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FAPE & lack of transition assessment.

Carrie I. v. Hawaii DOE, 59 IDELR 46 (D.C. HI 2012).

- “The lack of assessments alone is enough to constitute a lost educational opportunity.... ‘a procedural fault rises to a denial of FAPE when a school fails to conduct proper assessments and then provides inadequate services.’ ”

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FAPE & lack of transition assessment.

Carrie I. v. Hawaii DOE, 59 IDELR 46 (D.C. HI 2012).

- AND another problem... Doesn’t the lack of assessment negatively impact parent participation in the IEP? Yep.

“...with no assessments upon which to base those transition services, Carrie I. was denied any opportunity to participate in those processes in determining the LRE and its placement.”

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How to weigh conflicting data?

Sebastian M. v. King Phillip Regional Sch., 59 IDELR 61 (1st Cir. 2012).

- Testimony of two expert witnesses on transition given little weight vs. testimony of school employees. Why?
 - One expert, a neuropsychologist, never spoke with the student's teachers or reviewed his school work
 - The other, an education consultant, never conducted a formal assessment or observed the student at school.

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How to weigh conflicting data?

Sebastian M. v. King Phillip Regional Sch., 59 IDELR 61 (1st Cir. 2012).

- “The hearing officer gave little weight to this testimony. Instead, she credited the testimony of educators who worked directly with Sebastian at BICO and observed his daily progress there over a number of years....”
The Court agrees.
 - See also, *Marshall Joint School District #2 v. C.D., 54 IDELR 307, 616 F.3d 632 (7th Cir. 2010).*

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Choosing priorities for IEP services.

J.D.G. v. Colonial Sch. Dist., 55 IDELR 197 (D. Del. 2010).

- The parents believe that the IEP is not rigorous enough.

“The disagreement stems from the parents’ belief that the IEP is not challenging enough versus the other IEP members’ desire to build upon J.G.’s strengths due to his failure to master certain goals and objectives in the 2007/2008 IEP.”

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Choosing priorities for IEP services.

J.D.G. v. Colonial Sch. Dist., 55 IDELR 197 (D. Del. 2010).

- “Plaintiffs disagree with the shift in focus advanced in the IEP.... from rote memorization and repetitive drills, that the parents prefer, to understanding information and using it in an effective manner with an eye towards J.G.’s independent function [preferred by district members of the IEP team].”

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Choosing priorities for IEP services.

J.D.G. v. Colonial Sch. Dist., 55 IDELR 197 (D. Del. 2010).

- “During the administrative hearing, plaintiffs argued that it is their responsibility to promote J.G.’s independence and the district’s responsibility to introduce academic concepts to J.G.”
- Court: parents failed to establish that IEP was not reasonably calculated to provide meaningful benefit.

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Remedial college courses & FAPE

Strock v. ISD #281., 55 IDELR 197 (D. Del. 2010).

- “The Court also finds Kyle’s alleged unsuccessful transition to college affords him no relief. He was allowed to enroll at Normandale Community College upon graduation. That he was required to take certain remedial courses is neither unusual nor evidence of ‘unsuccessful transition,’ an entirely undefined term.”

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Remedial college courses & FAPE

Strock v. ISD #281., 55 IDELR 197 (D. Del. 2010).

- “The Court finds that being required to take a course which approximately 60% of a student’s fellows must take is scarcely evidence of unsuccessful transition.”

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No guarantee of results.

High v. Exeter Township Sch. Dist., 54 IDELR 17 (E.D. PA. 2010).

- “Unlike the IEP, a transition plan is not a strictly academic plan, but relates to post-secondary skills, including independent living skills and employment. 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.”

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No guarantee of results.

High v. Exeter Township Sch. Dist., 54 IDELR 17 (E.D. PA. 2010).

“...while the District helped Stephanie realize she wanted to attend college, the District was not required to ensure that she was successful in fulfilling that desire. The IDEA is meant to create opportunities for disabled children, not to guarantee a specific result.”

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No guarantee of results.

High v. Exeter Township Sch. Dist., 54 IDELR 17 (E.D. PA. 2010).

“Stephanie was six grade levels behind in reading when she arrived at the district for eleventh grade. It was unreasonable for Stephanie’s parents to expect she would be reading at a twelfth grade level by graduation.”

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Who does the planning?

34 C.F.R. § 300.321(b)(1)-(2).

- **The IEP Team, of course, with some help**
 - **The Student** must be invited if the purpose of the meeting is to consider post-secondary goals and the transition services needed to reach those goals. 300.321(b)(1).
 - What if the student doesn't attend? LEA must take other steps to ensure her preferences and interests are considered. 300.321(b)(2)

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What if the student can't participate now?

Tindell v. Evansville-Vanderburgh Sch., 59 IDELR 71 (S.D. IN. 2011).

- Student with severe anxiety and pervasive developmental disorder turned 16 in December of 2006.
- The court determined that a transition plan should have been in place by the 2006-07 school year.

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What if the student can't participate now?

Tindell v. Evansville-Vanderburgh Sch., 59 IDELR 71 (S.D. IN. 2011).

- The IEP Team did not develop a transition plan until February of 2009, just three months prior to his high school graduation.
- The court finds a procedural violation.... BUT surprisingly, does not find a violation of FAPE.

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What if the student can't participate now?

Tindell v. Evansville-Vanderburgh Sch., 59 IDELR 71 (S.D. IN. 2011).

“prior to his residential placement, no reasonable transition plan could be developed or implemented for him. Up to that point, Chris’ anxiety and mood disorder so severely impacted his ability and willingness to develop life skills appropriate for his age that he was not in a position to benefit from an in-depth transition plan....”

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What if the student can't participate now?

Tindell v. Evansville-Vanderburgh Sch., 59 IDELR 71 (S.D. IN. 2011).

“The record fully and fairly supports the IHO’s conclusion that the School provided transition services when Chris was in a position to benefit from them and that he demonstrated sufficient competence in such areas to transition to adult-level educational and vocational support services as intended....”

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What if the student can't participate now?

Tindell v. Evansville-Vanderburgh Sch., 59 IDELR 71 (S.D. IN. 2011).

“We therefore cannot hold that the procedural inadequacies associated with the School's delay in discussing a concrete transition plan for Chris resulted in a loss of educational opportunity.”

Please note: The facts of this case (and the result) are very unique, as demonstrated in a more recent case...

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Student preferences/participation

Gibson v. Forest Hills Dist. Bd. of Ed, 61 IDELR 97 (S.D. OH 2013).

- Chloe is 21, eligible because of a severe seizure disorder, intellectual disability and possible Pervasive Developmental Disorder (NOS).
- “The relationship between the Parents and the District has been difficult and acrimonious”

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Student preferences/participation

Gibson v. Forest Hills Dist. Bd. of Ed, 61 IDELR 97 (S.D. OH 2013).

- Why the acrimony? A difference in vision:
 - Parents advocate that “student receive an educational program involving increased academically challenging work” consistent with their desire for her future attendance at a post-secondary university.
 - District promotes “an educational program that will give the student functional skills” allowing Chloe “to work in a recreational/leisure setting and live with others.”

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Student preferences/participation

Gibson v. Forest Hills Dist. Bd. of Ed, 61 IDELR 97 (S.D. OH 2013).

- IEP meetings have been difficult.

“The history is one of long IEP meetings, many including the attendance of counsel for both parties and occasionally other advocates for Parents.... Parents have made progress difficult by making numerous demands and raising new topics in meetings so that the planned agenda could not be completed in the time allotted.”

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Student preferences/participation

Gibson v. Forest Hills Dist. Bd. of Ed, 61 IDELR 97 (S.D. OH 2013).

- “It is difficult to ascertain which aspects of the IEPs Parents disagree with over the years as they have not attached any documents to the IEPs indicating there area of disagreement.”
- Chloe’s special education teacher felt threatened and intimidated by the parents, and during the hearing, the IHO noted that the father glared at witnesses and the mother described employees as despicable and malicious.

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Student preferences/participation

Gibson v. Forest Hills Dist. Bd. of Ed, 61 IDELR 97 (S.D. OH 2013).

- “The facts are undisputed that Forest Hills did not invite Chloe to participate in IEP team meetings where transition services were discussed.”
- “Forest Hills did not consider asking Chloe to meetings because the parents never invited her, the meetings were long and adversarial, and Susie Giesting [her teacher] thought they would be frightening for Chloe and above her level of comprehension.”

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Student preferences/participation

Gibson v. Forest Hills Dist. Bd. of Ed, 61 IDELR 97 (S.D. OH 2013).

- The school *could have tried* to involve Chloe...

“Giesting admitted that she could have helped Chloe prepare to attend a meeting and that the IEP team could have modified or structured the meeting to make her attendance easier.”

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Student preferences/participation

Gibson v. Forest Hills Dist. Bd. of Ed, 61 IDELR 97 (S.D. OH 2013).

- Since both federal and state law required that Chloe be invited, the court found a procedural violation, that might not, on the right facts, constitute a denial of FAPE.
- Unfortunately for the school, these aren't the right facts.

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Student preferences/participation

Gibson v. Forest Hills Dist. Bd. of Ed, 61 IDELR 97 (S.D. OH 2013).

- “The procedural violation did not result in substantive harm if Forest Hills took other steps to ensure Chloe’s preferences and interests were considered.”
- BUT they didn't. NO age-appropriate assessments related to post-secondary goals, or formal transition/vocational assessment at the time of the hearing.”

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Student preferences/participation

Gibson v. Forest Hills Dist. Bd. of Ed, 61 IDELR 97 (S.D. OH 2013).

- “While the teacher could provide information on what the student liked and disliked at school, “this informal approach to determining Chloe’s post-secondary preferences and interests was not sufficient.”
- The result is substantive harm (can’t have appropriate transition services without assessment), and a violation of FAPE.

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Acquisition of advocacy skills.

OCR, Transition of Students, March 2011.

- “Students with disabilities, in particular, are moving from a system where parents and school staff usually advocated on their behalf to a system where they are expected to advocate for themselves.”
- Are students prepared to self-advocate?
 - A good trending practice

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Include medical self-monitoring skills?

Marple Newtown Sch. Dist. V. Rafael N., 48 IDELR 184 (E.D. PA. 2007).

- Parents of an ELL student with an intellectual disability and a severe seizure disorder argued that the transition plan was inappropriate.
 - “The student cannot participate in the curriculum when he is having an attack and often needs to sleep after a seizure.”
- Absence of a component to prepare Student for medical self-monitoring, among other lapses, makes transition plan inappropriate.

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Required Services vs. Desired services

K.C. v. Nazareth Sch. Dist., 57 IDELR 92 (E.D. PA. 2011)

- “The test of whether an IEP delivers a FAPE is whether it provides a student with the capacity for ‘meaningful educational benefits.’

...An IEP ‘need not necessarily provide the optimal level of services that parents might desire for the child.’ ”

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Required Services vs. Desired services

K.C. v. Nazareth Sch. Dist., 57 IDELR 92 (E.D. PA. 2011)

- “The fact that Dr. Cavaiuolo [parent’s expert witness] also indicated that the District could have improved upon the transition plan is irrelevant for purposes of determining whether the transition plan was appropriate.”

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Participating Agencies

Letter to Caplan, 50 IDELR 168 (OSEP 2008).

- **Any rule on which agencies to invite? No, but OSEP says consider such factors as:**
 - The purpose of the IEP Team meeting (considering postsecondary goals and the transition services needed to assist the child in reaching those goals?)
 - Is there some other public agency (NOT the LEA) that is likely to be responsible for providing or paying for the child’s transition services, and
 - Whether consent has been provided for the other agency’s participation.

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Participating Agencies

Letter to Caplan, 50 IDELR 168 (OSEP 2008).

- What if the agency is invited, but doesn't show up?
 - "the public agency lacks the authority to compel the participation of other agency representatives at transition IEP Team meetings."
 - The requirement that the LEA "ensure" participation of outside agencies was removed in 2006.

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Participating Agencies

34 C.F.R. 300.324(c)(1).

- What if the agency shows up, but doesn't follow through?

"If a participating agency, other than the public agency, fails to provide the transition services described in the IEP... the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP."

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Summary of Child's Academic & Functional Performance

- What is the Summary? 300.305(e)(3)

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

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Summary of Child's Academic & Functional Performance

• So which kids *don't* get the Summary?

- Public agencies are not required to provide an SOP for students who leave secondary school with a GED credential or alternate diploma
- Why? Their Part B eligibility for services has not terminated. A state *could* require an SOP for these students as well. *OSERS Q&A, Sept. 2011*

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Summary of Child's Academic & Functional Performance

• What else is in the summary?

"**The Act does not otherwise specify** the information that must be included in the summary and we do not believe that the regulations should include a list of required information. Rather, we believe that **State and local officials should have the flexibility** to determine the appropriate content in a child's summary, based on the child's individual needs and postsecondary goals."— Commentary, p. 46644.

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Summary of Child's Academic & Functional Performance

• It's not an evaluation for post-secondary life

"We do not believe that the regulations should require public agencies to conduct evaluations for children to meet the entrance or eligibility requirements of another institution or agency **because to do so would impose a significant cost on public agencies that is not required by the Act.**" —Commentary, p. 46644.

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Summary of Child's Academic & Functional Performance

- "...the Act does not require a public agency to assess a child with a disability to determine the child's eligibility to be considered a child with a disability in another agency, such as a vocational rehabilitation program, or a college or other postsecondary setting."
—Commentary, p. 46644.

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Summary of Child's Academic & Functional Performance

- LEA provides post-secondary services? No.

"The Act also does not require LEAs to provide the postsecondary services that may be included in the summary of the child's academic achievement and functional performance. **We believe it would impose costs on public agencies not contemplated** by the Act to include such requirements in the regulations." —Commentary, p. 46644.

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FAPE after Graduation?

Commentary, p. 46580.

- "Children with disabilities who have not graduated with a regular high school diploma still have an entitlement to FAPE until the child reaches the age at which eligibility ceases under the age requirements within the State."
- Part B does not terminate until the student is awarded a regular high school diploma or ages out, whichever comes first. OSERS Q&A

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FAPE after Graduation?

Commentary, p. 46580.

- What is a regular diploma?

“a regular high school diploma does not include an alternative degree that is not fully aligned with the State’s academic standards, such as a certificate or general educational development (GED) credential.”

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Some transition issues of interest

- Braille instruction based on future need
- Least restrictive environment considerations
 - In segregated employment
 - In guardianship decisions?
 - Involvement by Department of Justice

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Braille instruction & future need

Dear Colleague Letter, 113 LRP 25708 (OSERS 2013).

- The letter was prompted by concerns from parents and advocates over the significant decrease of visually impaired students receiving Braille instruction.

- The inference is that Braille instruction “is not being provided to some students for whom it may be appropriate.”

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Braille instruction & future need

Dear Colleague Letter, 113 LRP 25708 (OSERS 2013).

- “Despite the wide range of vision difficulties and varying adaptations to vision loss in the population of blind and visually impaired students, Braille has been a very effective reading and writing medium for many of them. Research has shown that knowledge of Braille provides numerous tangible and intangible benefits, including increased likelihood of obtaining productive employment and heightened self-esteem.”

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Braille instruction & future need

Dear Colleague Letter, 113 LRP 25708 (OSERS 2013).

- “The IDEA requires that Braille instruction must be provided to a child who is blind or visually impaired, unless the IEP Team determines, **based on an evaluation of the child's current and future reading and writing needs**, that Braille instruction is not appropriate for a particular child.”

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Braille instruction & future need

Dear Colleague Letter, 113 LRP 25708 (OSERS 2013).

- “Factors, such as shortages of trained personnel to provide Braille instruction; the availability of alternative reading media (including large print materials, recorded materials, or computers with speech output); or the amount of time needed to provide a child with sufficient and regular instruction to attain proficiency in Braille, may not be used to deny Braille instruction to a child.”

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Braille instruction & future need

Dear Colleague Letter, 113 LRP 25708 (OSERS 2013).

- "...because the evaluation also must assess a child's future needs, a child's current vision status should not necessarily determine whether it would be inappropriate for that child to receive Braille instruction while in school. This is particularly true for a child with a degenerative vision condition who may have a high degree of functional vision when the evaluation is conducted."

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Braille instruction & future need

Dear Colleague Letter, 113 LRP 25708 (OSERS 2013).

- "The evaluation of such a child would need to assess whether, despite the child's current vision status, the child still could benefit from Braille instruction while in school to increase the likelihood that the child will obtain productive employment and be able to participate more fully in family and community life."

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LRE and segregated employment

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

- "Work placement can be an appropriate transition service, depending on the needs of a student, but is not a required component of all IEPs that address transition services. If an IEP team determines that work placement is an appropriate transition service for a child, it must be included in the child's IEP."

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LRE and segregated employment

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

- “Under the IDEA, a segregated employment program may be an appropriate work placement for a particular student if determined appropriate by that student’s IEP Team based on the LRE requirements and the specific individualized needs of that student.”

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LRE and segregated employment

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

- “That is, the IDEA does not prohibit segregated employment, but the LRE provisions would apply equally to the employment portion of the student’s programs and placement.”

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LRE and segregated employment

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

- “Therefore, when 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, any supplementary aids and services needed to enable the student to participate with other students with disabilities and nondisabled students in the work placement described in the IEP.”

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LRE and segregated employment

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

- “The LEA must provide any supplementary aids and services that are identified on the IEP.”

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LRE-like consideration in a guardianship

Ross v. Hatch, 113 LRP 31633 (Va. Cir. Ct. 2013).

- Guardianship hearing for a 29-year old woman (Respondent) with Down Syndrome, identified as intellectually disabled.
- Respondent had a “persistent history” of irresponsibility with personal finances and inability to maintain her personal safety (personal injuries from accidents and difficulty utilizing proper dosages of meds).

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LRE-like consideration in a guardianship

Ross v. Hatch, 113 LRP 31633 (Va. Cir. Ct. 2013).

- Respondent cannot live independently or semi-independently
- Court appoints Guardians “with the ultimate goal of transitioning to the “supportive decision making model” with Guardians assisting Respondent in making and implementing decisions.

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It's not just OCR enforcing these rules....

- Civil Rights Division of the U.S. Department of Justice actions on sheltered workshops:
 - *Lane v. Kitzhaber*, 112 IDELR 26558 (D. OR. 2012)(Allegations that various Oregon officials are violating ADA & Section 504 by dedicating a disproportionate amount of their resources to fund sheltered workshops for adults at the expense of supported employment services. Action dismissed with instructions on appropriate amendment.)

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It's not just OCR enforcing these rules....

- Civil Rights Division of the U.S. Department of Justice actions on sheltered workshops:
 - *U.S. v. State of Rhode Island & City of Providence*, No. CA13-442-L (D.R.I. 2013)(Complaint filed in June alleging that "by requiring students to spend part of the day in a school-based and -operated sheltered workshop as part of the curriculum, Birch has trained students for continued placement in segregated sheltered workshops.").

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Does Section 504 add anything?

- Section 504 contains no formal transition requirements.
- IDEA and Section 504-eligible students receive the nondiscrimination protection of Section 504
- Consequently, IDEA students have an equal opportunity to participate in all of the school's regular education transition programs.

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Post-Secondary Transition under Section 504

- Nondiscrimination requires equal participation in school programs/activities that help kids:
 - Identify skills, careers paths, education options, potential employment (college nights & career fairs)
 - Understand & access entrance exams (ACT/SAT)
 - Apply for admission, find and secure scholarships
 - Career counseling has its own rule.

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Post-Secondary Transition under Section 504

- Section 504's rule on nondiscriminatory career counseling prohibits counseling disabled students to "more restrictive career objectives that nondisabled students with similar interests and abilities." § 104.37(b).

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The 504 Student Transitions to Employment/College

- After graduation, some big differences.
 - Reasonable accommodation instead of FAPE
 - There is no Section 504 "group of knowledgeable people taking care of things—The adult employee/student must self-advocate

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The 504 Student Transitions to Employment/College

- At graduation, the student will move from a system of support—triggered, overseen, and driven by others.
 - What problems will develop when, at graduation, that support is gone?
 - What skills will the student need to access and protect his 504/ADA rights?
- These concerns (+ 504's nondiscrimination approach) should inform transition thinking.

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The 504 Student Transitions to Employment/College

- Student involvement as member of 504 Committee can help student develop self-advocacy skills:
 - Encourage student to discuss impairment, how it impacts him, and thoughts on accommodations
 - Student thoughts on implementation of plan
 - Write 504 Plans with eye for self-sufficiency
 - Encourage student to explain disability and 504 plan to a teacher
 - BUT: don't make student responsible for FAPE

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The 504 Student Transitions to Employment/College & Evaluation

- “We do not believe that the regulations should require public agencies to conduct evaluations for children to meet the entrance or eligibility requirements of another institution or agency because to do so would impose a significant cost on public agencies that is not required by the Act.” 71 Federal Register No. 156, August 14, 2006, p. 46,644.

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The 504 Student Transitions to Employment/College & Evaluation

- “While the requirements for secondary transition are intended to help parents and schools assist children with disabilities transition beyond high school...the Act does not require a public agency to assess a child with a disability to determine the child’s eligibility to be considered a child with a disability in another agency, such as a vocational rehabilitation program, or a college or other post-secondary setting.” *Id.*

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IDEA & Grade-level curriculum

- This is a transition requirement that begins when the child starts school.
 - IDEA rules since 1997 have raised curricular expectations for special education students.
 - **Compliance with this requirement can make a tremendous difference in the student’s readiness for post-secondary opportunities.**

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Raised Expectations in IDEA ‘97

20 U.S.C. § 1401(c)(3)(1997).

- Congress began the 1997 reauthorization with language reminding folks that many students with disabilities had been excluded from school or poorly served at school prior to the EHA.
- Congress declares that these two problems have been addressed.... and it’s time to raise the bar.

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Raised Expectations in IDEA '97

20 U.S.C. § 1401(c)(3)&(4)(1997).

“However, the implementation of this Act **has been impeded by low expectations**, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.”

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Raised Expectations in IDEA '97

20 U.S.C. § 1401(c)(5)(1997).

- So, here's the requirement....
 - “Over 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—having high expectations for such children and ensuring their **access in the general curriculum to the maximum extent possible[.]**”

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Raised Expectations in IDEA '97

Commentary on § 300.347(a)(3) (1999).

- “In order to ensure full access to the general curriculum, it is not necessary to amend Sec. 300.347(a)(3)(ii) to clarify that a child’s involvement and progress in the general curriculum must be ‘to the maximum extent appropriate to needs of the child.’ **The individualization of the IEP process, together with the new requirements related to the general curriculum, should ensure that such involvement and progress is ‘to the maximum extent appropriate to the needs of the child.’**”

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Isn't that language & structure familiar?

- Note that Congress used language that we commonly associate with traditional LRE
- Traditional LRE notions guide thinking:
 - LRE begins with a default (regular classroom)
 - LRE yields to educational benefit
 - LRE is not an "all or nothing" requirement

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Raised Expectations in IDEA '97

- What does this mean?
 - The regular curriculum is the default expectation for all kids.
 - Some students, because of disability, may not be able to benefit educationally in the full regular curriculum.
 - In such cases, the IEP team's job is to provide as much access and progress in the regular curriculum as possible, while still providing educational benefit.

89

What is "Curricular LRE?"

- Consider this working definition:
 - Exposure to the grade-level curriculum to the maximum extent appropriate for this student's educational benefit.
- The author prefers "curricular LRE" because it reminds us of the dynamic. Feel free to think "standards-based IEPs" instead.

90

Standards-based IEPs

Commentary to 2007 Assessment regs, 72 Fed. Reg. 17758 (2007).

- Incorporating state-based content standards in IEPs is one way to get the job done.

“Such an approach focuses the IEP Team and the student on grade-level content and the student’s achievement level relative to those content standards.”

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AZ on standards-based IEPs

- As an example,
 - “It is now expected that all IEP teams will align IEPs with the Arizona College and Career Ready Standards (AZCCRS) and provide students with disabilities access to the AZCCRS.”

-Arizona College and Career Ready Standards & Core Content Connectors in Mathematics, Arizona Department of Education, Developed by the National Center and State Collaborative (NCSC) (September 2014, slide 2)

92

A fighting chance to succeed?

Fresno Unified School District, 52 IDELR 150 (SEA Cal. 2009).

- A magnet HS (with lottery-based admissions) sought to move a student with mild intellectual disability to a self-contained placement.
- School’s argument: since the student does not perform at grade level in core academics, she gets no educational benefit from regular classroom.

93

A fighting chance to succeed?

Fresno Unified School District, 52 IDELR 150 (SEA Cal. 2009).

- The ALJ: “a student’s failure to perform at grade level is not necessarily indicative of a denial of FAPE, as long as the student is making progress commensurate with his abilities.”
- The Student was making some progress toward IEP goals at a functional level in core English and math

94

A fighting chance to succeed?

Fresno Unified School District, 52 IDELR 150 (SEA Cal. 2009).

- A note: would it have helped the school if the regular ed algebra and English teachers had made more of an effort?

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Reducing expectations & clean hands.

Pickens County Sch. Dist., 110 LRP 2301 (SEA Ga. 2009).

- The district provided inconsistent IEP services to a student with Rett’s Syndrome and an intellectual disability.
 - Only 25% of required OT services, and 35% of speech services were provided during three months in the fall of 2009.
 - The student was walked around the school for hours every school day. There was “no reliable testimony” that instruction was provided during this time.

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Reducing expectations & clean hands.

Pickens County Sch. Dist., 110 LRP 2301 (SEA Ga. 2009).

- Of the ten goals, "four were Goals practically the same as the prior year's Goals, but with lower mastery criteria." One goal was higher, and two remained the same.
- Parents objected to the reduced expectation, but the school argued that the 2008-'09 goals were "too ambitious." Parents eventually filed, and sought residential placement.
- ALJ: The most significant claim is that the same IEP was used year after year with similar goals and no progress.

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Reducing expectations & clean hands.

Pickens County Sch. Dist., 110 LRP 2301 (SEA Ga. 2009).

- **The district**, aware of the parents' concerns regarding lack of progress and its own failures to provide required services "**chose the easiest method of handling" the student's lack of progress, i.e., reducing expectations.**
- **The ALJ was "not provided evidence to indicate that this reduction in expectations will likely result in progress."** Parents were awarded two years of residential placement.

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All grade-level curriculum is too much....

Brillon v. Klein ISD, 41 IDELR 121 (5th Cir. 2004)(Unpublished).

- "[T]o implement the goals and objectives that the parties agreed were appropriate for Ethan in the second grade, the 2001 ARD committee reported that the 'curriculum would have to be modified beyond recognition.'"
- Lesson: This students could not handle all of the grade-level curriculum and benefit. The question: how much could he handle, and still benefit?

99

The wrong service can deny FAPE.

Sherman v. Mamaroneck Union Free SD, 340 F.3d 87 (2nd Cir. 2003).

- Student with a learning disability in math was provided through his IEP with a TI-82 calculator. The school refused a parent request to use a TI-92 as it would factor for him, a skill he was capable of learning and one required by the grade level curriculum.
- The Court: The TI-92 is inappropriate because “it would allow Grant to answer questions without demonstrating any understanding of the underlying math concepts.”

100

The wrong service can deny FAPE.

Sherman v. Mamaroneck Union Free SD, 340 F.3d 87 (2nd Cir. 2003).

“If a school district simply provided that assistive device requested, even if unneeded, and awarded passing grades, it would in fact deny the appropriate educational benefits the IDEA requires.”

Lesson: Providing excessive or inappropriate assistance can deny access to grade-level curriculum and FAPE.

101

What can we learn from the cases?

S.K. v. Parsippany-Troy Hills Board of Education (D.C.N.J. 2008)(unpublished).

- Can a more restrictive placement be required for a student to access grade level curriculum? Yes.
 - The student has multiple disabilities including autism, specific learning disabilities, ADHD, and speech and language impairments.
 - He was mainstreamed for three years (grades K-2) with significant supports, and poor results. He was not making progress in basic academic skills.

102

What can we learn from the cases?

S.K. v. Parsippany-Troy Hills Board of Education (D.C.N.J. 2008)(unpublished).

- The school sought a more restrictive placement, and the parents objected.
- The parent's independent evaluator concluded: "It is clear, however, that he requires special education to develop basic reading skills commensurate with his ability and to develop basic skills in math and written expression so that he has the necessary competencies before transitioning to higher grades."

103

What can we learn from the cases?

S.K. v. Parsippany-Troy Hills Board of Education (D.C.N.J. 2008)(unpublished).

- Said the court: "a self-contained placement is necessary for N.K. to develop the fundamental skills he has failed to develop in the several years he has spent in the classroom.... N.K.'s failure to achieve more than negligible benefit during his three year's worth of regular education instruction persuades this court that the challenged IEPs proposed placement of N.K. in a self-contained classroom was "reasonably calculated to enable the child to receive educational benefits."

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What can we learn from the cases?

Greenwood v. Wissahickon School District, (E.D. Pa. 2008).

- Parents want to mainstream a 17-year-old student with severe ID, and static nonprogressive encephalopathy, together with a sensory disorder affecting her ability to sustain focused attention, postural control and motor planning.
- The Court: "Greater inclusion in academic courses compromises any achievement in acquiring essential life skills needed to improve her functional ability...."

105

What can we learn from the cases?

Greenwood v. Wissahickon School District, (E.D. Pa. 2008).

- "The record establishes that Angela received little, if any, educational benefit from her inclusion in regular class. The reliable testimony from her teachers demonstrates that her ability to receive educational benefit from regular education is extremely low Angela's eighth-grade teacher similarly concluded that Angela made no progress on any academic goals in her regular education class."

106

What can we learn from the cases?

Greenwood v. Wissahickon School District, (E.D. Pa. 2008).

- "Mainstreaming does not require inclusion in a regular classroom if doing so would jeopardize a student's ability to achieve a meaningful educational benefit. Thus, inclusion is not appropriate when the nature or severity of a student's disability precludes an educational benefit from inclusion with non-disabled students by means of supplementary aids and services."

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- Life skills placement was upheld.

Curriculum & staff training.

Pasadena ISD, 58 IDELR 201 (SEA Tex. 2012).

- Parents of a student with autism complained that the student was not receiving the state mandated health curriculum, including sex education.
- Some staff indicated that the instruction was not appropriate for the student given his disability. Parent disagreed, found the comments disrespectful, and filed for due process.

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Curriculum & staff training.

Pasadena ISD, 58 IDELR 201 (SEA Tex. 2012).

- Eventually, staff proposed a set of health objectives based on data from the student's responses to health questions on a criterion-referenced assessment tool.
- Hearing Officer: The delay in providing the instruction did not cause "substantive educational harm."
- While a few comments by staff didn't justify staff training, "the fact that it was the parent, not school staff, who initiated the addition of human sexuality to Student's educational program" does require staff development.

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Curriculum & staff training.

Pasadena ISD, 58 IDELR 201 (SEA Tex. 2012).

- "In that regard if staff had been trained on how to teach human sexuality to students with autism and intellectual disabilities the school district might have addressed Student's needs in this area" in a more timely way.
- The Hearing Officer orders training of staff in this area to be completed by the first six weeks of the school year.
- Lesson: School staff must be prepared to provide instruction in all of the state's curriculum to students with a variety of impairments and needs.

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