

**POST-SECONDARY TRANSITION OF STUDENTS WITH DISABILITIES:
IMPORTANT REQUIREMENTS AND COURT AND AGENCY DECISIONS**

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With every reauthorization of the IDEA, Congress has placed more emphasis upon post-school outcomes for students with disabilities and amended the law to include more focus on the provision of transition services to them. This session will explore the legal history of the law's transition services requirements, as well as court and agency decisions that have attempted to define what services are appropriate to meet the law's post-secondary transition requirements and what an appropriate transition plan is to look like. In addition, any impact on the law's transition requirements resulting from the passage of the Workforce Innovation and Opportunity Act (WIOA) and its final implementing regulations will be addressed.

I. HISTORY OF THE TRANSITION REQUIREMENTS IN THE LAW

In 1990, the IDEA was amended to specifically require, for the first time, the provision of transition services to students with disabilities as part of the provision of special education and related services to students with disabilities. In 1997, the transition requirements were significantly broadened and, with the 2004 IDEA Amendments (the most recent amendments to the law), the transition requirements were revised again, with additional focus upon the importance of post-public school outcomes for students with disabilities and the clear delineation of post-secondary goals.

As suggested by the President's Commission as part of the 2004 IDEA Amendments process (described below), amendments to the Rehabilitation Act were finally forthcoming. The Workforce Innovation and Opportunity Act (WIOA) was signed by the President on July 22, 2014, calling for, among other things, vocational rehabilitation agencies to focus more effort on postsecondary transition. It has been said that WIOA could drive new language for the IDEA when it is next reauthorized (whenever that may be), so that Vocational Rehabilitation (VR) and school agencies collaborate more with each other. That will remain to be seen.

The Report of the President's Commission

Sometimes referred to as the "blueprint" for the 2004 IDEA Amendments, the July 1, 2002 Report of the President's Commission on Excellence in Special Education (PCESE) focused heavily on needed reforms in the area of transition. Specifically, the PCESE found that "[t]he

focus on compliance and bureaucratic imperatives in the current system, instead of academic achievement and social outcomes, fails too many children with disabilities. Too few successfully graduate from high school or transition to full employment and post-secondary opportunities, despite provisions in IDEA providing for transition services. Parents want an education system that is results oriented and focused on the child's needs—in school and beyond.” *A New Era: Revitalizing Special Education for Children and Their Families*, Finding 9.

With respect to post-secondary results for students with disabilities and effective transition services, the PCESE made the following specific recommendations:

SIMPLIFY FEDERAL TRANSITION REQUIREMENTS IN THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT: These provisions should provide clear steps for integrating school and non-school transition services, and closely link transition services to the goals in each student's individualized education plan.

MANDATE FEDERAL INTERAGENCY COORDINATION OF RESOURCES: Multiple federal policies and programs must be required to work together to improve competitive employment outcomes and increase access to higher education for students with disabilities. An Executive Order mandating existing agency coordination and pooling of existing funds will improve transition services. Further, the bridge between federal special education policy and rehabilitation policy must be strengthened.

CREATE REHABILITATION ACT REAUTHORIZATION ADVISORY COMMITTEE: The Secretary of Education should create an advisory committee to examine the reauthorization of the Rehabilitation Act.

SUPPORT HIGHER EDUCATION FACULTY, ADMINISTRATORS AND AUXILIARY SERVICE PROVIDERS TO MORE EFFECTIVELY PROVIDE AND HELP STUDENTS WITH DISABILITIES TO COMPLETE A HIGH QUALITY POST-SECONDARY EDUCATION. Support and hold accountable all post-secondary institutions receiving federal funding for using evidence-based, best-practice programs and practices. Fund programs to educate post-secondary education personnel about modifications and accommodations for students with disabilities that have been proven to increase graduation rates and entry into the workforce.

II. THE 2004 IDEA AMENDMENTS -- TRANSITION PROVISIONS

A. The Preamble

In the Preamble to the 2004 IDEA, Congress begins with a number of findings. Included in those findings is the following language:

Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by (A) having high

expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to (i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and (ii) be prepared to lead productive and independent adult lives, to the maximum extent possible....

20 U.S.C. § 1401(c)(5)(A).

In addition, Congress finds that “[a]s the graduation rates for children with disabilities continue to climb, **providing effective transition services** to promote successful post-school employment or education is an important measure of accountability for children with disabilities.” 20 U.S.C. § 1401(c)(14).

Finally and in reference to language pertinent to the transition requirements, one of the stated purposes of the 2004 IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and **prepare them for further education, employment, and independent living**....” 20 U.S.C. § 1401(d)(1)(A).

B. The Definition of “Transition Services”

The 2004 IDEA Amendments enhanced and re-defined transition services:

The term ‘transition services’ means a coordinated set of activities for a child with a disability that –

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

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

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and (provision of a) functional vocational evaluation.

20 U.S.C. § 1402(34). (The parenthetical was added by the final regulations in 2006). As already provided in the 1999 regulations, the 2006 IDEA regulations added to the definition of transition services by providing that they “may be special education, if provided as specially

designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.” 34 C.F.R. § 300.43(b).

C. State-level Activities

The 2004 IDEA authorized States to use reserved funds and conduct state-level activities, including those for the “development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities....” 20 U.S.C. § 1411(e)(2)(C)(vi).

D. Summary of Performance

In requiring an evaluation before determining a child is no longer a child with a disability, the 2004 IDEA provides for an exception when the termination of the child’s eligibility is due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law. In lieu of a re-evaluation, however, a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals. 20 U.S.C. § 1414 (c)(5).

It should be noted that the regulations clarify that 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 a general educational development credential (GED). 34 C.F.R. §300.102(a)(3).

E. IEP Requirements

IDEA 1997

The 1997 IDEA set forth the requirement that the IEP, beginning at age 14, and updated annually, include “a statement of the transition service needs of the child under the applicable components of the child’s IEP that focuses on the child’s courses of study (such as participation in advanced-placement courses or a vocational education program).” The statute then provided that “beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages....” 1997 IDEA, § 1414(d)(1)(A)(vii).

IDEA 2004

The 2004 IDEA maintained the requirement that transition be included in a student’s IEP but beginning “**not later than the first IEP to be in effect when the child is 16 and updated annually thereafter.**” The IEP must include:

- (a) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;**

(b) the transition services (including courses of study) needed to assist the child in reaching those goals; and

(c) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority....

20 U.S.C. § 1414(d)(1)(A)(i)(VIII).

The 2006 IDEA Regulations

The regulations added to the IDEA's language by providing transition services "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..." 34 C.F.R. § 300.320(b). In the commentary to the regulations, the US DOE explains that "[b]ecause IEP Team decisions must always be individualized, we have included the phrase 'or younger if determined appropriate by the IEP Team.'" In addition, the Department notes that "a State could require transition services, if it chose to do so, to begin before age 16 for all children in the State. However... a State that chooses to require transition services before age 16 for all children would have to identify in writing to its LEAs and to the Secretary that such rule, regulation, or policy is a State-imposed requirement that is not required by Part B of the Act and Federal regulations." 71 Fed. Reg. 46667.

DOE's commentary to the regulations also emphasized the significant changes made by the 2004 IDEA to the monitoring and enforcement requirements under Part B of the Act, including the primary focus of monitoring to be on improving educational results and functional outcomes for children with disabilities. DOE further emphasized that transition services be specifically addressed in State performance plans. "We believe that these changes to the monitoring and enforcement requirements will ensure that States and LEAs are held accountable for the transition services they provide." 71 Fed. Reg. 46668.

"Post-secondary goals": The DOE commentary to the regulations notes that "[w]e do not believe it is necessary to include a definition of 'postsecondary goals' in the regulations. The term is generally understood to refer to those goals that a child hopes to achieve after leaving secondary school (i.e., high school)." 71 Fed. Reg. 46668.

F. IEP Team Members

1999 Regulations

The 1999 IDEA Regulations added to the IEP Team membership, requiring the educational agency to invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of "the student's transition service needs," "the needed transition services for the student" or "both." 34 C.F.R. § 300.344(b)(1) (1999). If the

student does not attend the meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered. 34 C.F.R. § 300.344(b)(2)(1999).

In addition to requiring that the student be invited to transition IEP meetings, the 1999 regulations required the public agency to invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. Where the agency invited to send a representative does not do so, the public agency shall take other steps to obtain participation of the other agency in the planning of transition services. 34 C.F.R. § 300.344(b)(3) (1999).

2006 IDEA Regulations

The 2006 regulations altered the above requirements to provide that “to the extent appropriate” and with the consent of the parents or a child who has reached the age of majority, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. 34 C.F.R. §300.321(b)(3). However, the requirement to “take other steps to obtain participation” of the other agency in the planning of transition services was removed.

The U.S. DOE commentary with respect to this requirement noted that:

§ 300.321(b) modifies previous regulations regarding transition services planning for children with disabilities who are 16 through 21 years old. Public agencies are still required to invite other agencies that are likely to be responsible for providing or paying for transition services to the child's IEP Team meeting. If the invited agency does not send a representative, public agencies are no longer required to take additional steps to obtain the participation of those agencies in the planning of transition, as required under former § 300.344(b)(3)(ii).

Public agencies will realize savings from the change to the extent that they will not have to continue to contact agencies that declined to participate in IEP Team meetings on transition planning. In school year 2006–2007, we project that public agencies will conduct 1,193 million meetings for students with disabilities who are 16 through 21 years old. We used data from the *National Longitudinal Transition Study 2* (NLTS2) on school contacts of outside agency personnel to project the number of instances in which outside agencies would be invited to IEP Team meetings during the 2006–2007 school year. The NLTS2 also collected data on the percentage of children with a transition plan for whom outside agency staff were actively involved in transition planning. Based on these data, we project that 432,800 (29 percent) of the contacts will result in the active participation of outside agency personnel in transition planning for children with disabilities age 16 through 21.

We base our estimate of the savings from the change on the projected 1,059,200 (71 percent) instances in which outside agencies will not participate in transition planning despite school contacts that, under the previous regulations,

would have included both an invitation to participate in the child's IEP Team meeting and additional follow-up attempts. If public agencies made only one additional attempt to contact the outside agency and each attempt required 15 minutes of administrative personnel time, then the proposed change will save \$6.6 million (based on an average hourly compensation for office and administrative support staff of \$25).

Studies of best practices conducted by the National Center on Secondary Education and Transition indicate that effective transition planning requires structured interagency collaboration. Successful approaches cited in the studies included memoranda of understanding between relevant agencies and interagency teams or coordinators to ensure that educators, State agency personnel and other community service providers share information with parents and children with disabilities. The previous regulations focused on administrative contact instead of active strategic partnerships between agencies that facilitate seamless transitions for students with disabilities between school and adult settings. For this reason, the Department believes that the elimination of the non-statutory requirement that public agencies make additional attempts to contact other agencies will reduce administrative burden and allow public agencies to focus their efforts on interagency collaborative transition planning for children with disabilities.

71 Fed. Reg. 46751.

G. IEP Meeting Notice

2006 IDEA Regulations

The 2006 regulations maintained the 1999 regulatory requirement that for a child with a disability 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, the notice of IEP meeting must also indicate (a) that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child and (b) that the agency will invite the student; and (c) identify any other agency that will be invited to send a representative. 34 C.F.R. § 300.322(b)(2).

H. Consent for Release of Information

34 C.F.R. §300.622(b)(1) clarifies that parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of the Act or these regulations. However, new § 300.622(b)(2) provided that parental consent must be obtained before personally identifiable information is released to officials of participating agencies that provide or pay for transition services. OSEP has interpreted this to mean that districts must seek consent every time they wish to invite an agency representative to an IEP meeting. Letter to Gray, 50 IDELR 198 (OSEP 2008).

I. Failure to Provide Transition Services

The 2004 IDEA maintained the provision that if a participating agency, other than the local educational agency, fails to provide the transition services described in an IEP, the LEA shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP. 20 U.S.C. § 1414(d)(6).

2006 IDEA Regulations

The 2006 regulations added a “rule of construction” that provides that “[n]othing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency. 34 C.F.R. § 300.324(c)(2).

In addition, 34 C.F.R. § 300.154 set forth methods for ensuring services, including transition services, by requiring the Chief Executive Officer of a State or designee of that officer to ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency and the SEA, in order to ensure that all services that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any interagency dispute. The agreement or mechanism must include the following:

- (1) An identification of, or a method for defining, the financial responsibility of each agency for providing services to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child’s IEP).
- (2) The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.
- (3) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.
- (4) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services.

The regulation goes on to address the obligation of noneducational public agencies by providing that if any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to a cooperative agreement, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in § 300.5 relating to assistive technology

devices, § 300.6 relating to assistive technology services, § 300.34 relating to related services, § 300.41 relating to supplementary aids and services, **and § 300.42 relating to transition services**) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement or cooperative agreement.

A noneducational public agency may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context. If a public agency other than an educational agency fails to provide or pay for the special education and related services, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism. 34 C.F.R. § 300.154.

See also, Letter to McMurdo, 35 IDELR 161 (OSERS 2000). Formal interagency agreement between the SEA and, as appropriate, one or more LEAs, and the state VR agency define the parameters for collaboration in the delivery of transition services. In addition to addressing financial responsibility for services, interagency agreements must also contain conditions, terms and procedures for reimbursement; dispute resolution procedures; and procedures for coordination and timely delivery of services.

Question: What if the State does not mandate interagency agreements?

Lawrence Tp. Bd. of Educ. v. State of New Jersey, 43 IDELR 242, 417 F.3d 368 (3d Cir. 2005). Local education agencies do not have standing to sue the state for the funding of a residential placement for a student with autism.

J. Application to Children in Adult Prisons

The 2004 IDEA maintained the provision that the transition provisions do not apply to children who are convicted as adults and incarcerated in adult prisons whose eligibility for FAPE will end, because of age, before release from prison. 20 U.S.C. § 1414(d)(7).

K. Monitoring Priorities

The 2004 IDEA required the U.S. Secretary to monitor the States and requires each State to monitor the LEAs using “quantifiable indicators as are needed to adequately measure performance” in several priority areas, including “State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, **and a system of transition services....**” 20 U.S.C. § 1416(a)(3). In addition, as a part of the State performance plan submitted to the Secretary, each State shall establish measurable and rigorous targets for the indicators established under the priority areas. 20 U.S.C § 1416(b)(2)(A). Finally, each State must collect valid and reliable information as needed to report annually to the Secretary on the priority areas. 20 U.S.C. § 1416(b)(2)(B).

L. Part D Provisions

Part D of the 2004 IDEA recognizes that an effective educational system serving students with disabilities should, among other things “clearly define, in objective, measurable terms, the school and post-school results that children with disabilities are expected to achieve” and “promote transition services and coordinate State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who need significant levels of support to participate and learn in school and in the community.” 20 U.S.C. § 1450(a)(4).

Part D authorizes grant awards “to assist State educational agencies in reforming and improving their systems for personnel preparation and professional development in early intervention, educational **and transition services** in order to improve results for children with disabilities.” 20 U.S.C. § 1451.

III. RELEVANT HIGHLIGHTS OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA) AND FINAL RULES

While WIOA did not change the post-secondary transition obligations of school districts, it may change the approach of school districts to providing transition services. It has been noted that, with the passage of WIOA, school districts could expect vocational rehabilitation (VR) to play a much more collaborative role in transition planning for students with disabilities.

Since the passage of WIOA in 2014, the U.S. Departments of Labor and Education have collectively worked on and have now issued five rules to implement the WIOA. On August 19, 2016, the Departments announced publication of the final rules in the Federal Register as follows:

- *WIOA*: Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions—Final Rule (<https://federalregister.gov/a/2016-15977>) – effective date October 18, 2016
- State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage—Final Rule (<https://federalregister.gov/a/2016-15980>)—effective date September 19, 2016, except 34 CFR 361.10; 34 CFR 361.23; 34 CFR 361.40; and subparts D, E and F of part 361, which will become effective October 18, 2016
- *WIOA*: Miscellaneous Program Changes—Final Rule (<https://federalregister.gov/a/2016-16046>) – effective date September 19, 2016, except the removal of part 388 becomes effective October 1, 2016
- Programs and Activities Authorized by the *Adult Education and Family Literacy Act* (Title II of the *WIOA*)—Final Rule (<https://federalregister.gov/a/2016-16049>) – effective date September 19, 2016, except subparts H, I and J of part 463, which become effective October 18, 2016
- *WIOA*: Department of Labor-Only—Final Rule (<https://federalregister.gov/a/2016-15975>) – effective date October 18, 2016

In many ways, WIOA is designed to assist people with disabilities find competitive employment rather than jobs that pay less than minimum wage under an exception for those “whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury.” In summary and relevant to transition of students with disabilities, a few of the highlights of WIOA and the Final Rules include the following:

- State VR agencies are required to set aside and use at least 15% of their federal funding to provide “pre-employment transition services” for students with disabilities, including “coordinating activities with transition services provided by local educational agencies under the IDEA”;
- The number of sheltered workshops will be reduced;
- “Customized employment” for individuals with a significant disability must be provided—defined as “competitive integrated employment”—that is based on an individualized determination of strengths, needs and interests of the individual, designed to meet the specific abilities of the individual and the business needs of the employer;
- Processes must be satisfied in order for any individual to receive sub-minimum wage, including students under the age of 25 first going through VR and be given the opportunity to work in an integrative setting via IDEA or WIOA, unless the student is employed by an entity holding a 14(c) certificate which allows entities to pay less than minimum wage (VR and special education are working to see the issuance of such certificates reduced and used only when necessary and appropriate for students who cannot perform at an exceptional level on the job due to their disabilities);
- An SEA or LEA “may not enter into a contract or other arrangement with 14(c) certificate holders for the purpose of operating a program for an individual who is age 24 or younger under which work is compensated at a subminimum wage; and

Unfortunately, there are a lot of questions related to the effectiveness and enforcement of some of these provisions. For instance, how will the requirements be enforced and by whom? Who will document the receipt of “pre-employment transition services”? Who will make sure that SEAs and LEAs do not enter into prohibited contracts or other arrangements? And how are VR agencies and LEAs going to coordinate their transition efforts, including determining which agency pays for which services?

Some of these questions were addressed in the final rule dealing with subminimum wages. General requirements for documenting pre-employment transition services are in Section 397.10 of the Rule, but the requirements related to LEAs are in Section 397.30. This section provides that “educational personnel must transmit the documentation...to the designated [vocational rehabilitation] unit as soon as possible upon the completion of each of the required actions, but no later than 30 calendar days after the completion of the required activity or service; or 60 calendar days, if additional time is necessary due to extenuating circumstances.” Enforcement of the ban on certain contracts or other arrangements with 14(c) certificate holders, however, is left to the interagency agreements between SEAs and state VR agencies, and the same interagency agreements are to set forth a division of labor in providing pre-employment transition services.

In the preamble to the Rule, the U.S. DOE notes that the purpose of the transition service—whether it is related more to an employment outcome or education—will assist in determining

which agency is responsible for it. In addition, asking whether the service is one that the school customarily provides under Part B of the IDEA will be important. For instance, if the school ordinarily provides job exploration counseling or work experiences to its eligible students with disabilities, the mere fact that those are now authorized under the WIOA as pre-employment transition services does not mean the school should cease providing them and refer those students to the VR program. Lastly, the U.S. DOE notes that determining whether the student is eligible for transition services under the IDEA will be important, since students with 504 Plans are included in the definition of “student with a disability” in the workforce law. As a result, state VR agencies are authorized to provide transition services under the VR program to a broader population under WIOA than LEAs are authorized to provide under the IDEA.

According to the Rule, each party to the interagency agreement has its obligations. The U.S. DOE notes that while neither WIOA nor the IDEA is explicit as to which agency is financially responsible for providing pre-employment transition services and transition services, neither the VR nor the LEA may shift the burden for providing services for which it otherwise would be responsible.

IV. THE EVERY STUDENT SUCCEEDS ACT (ESSA)

The Every Student Succeeds Act of 2015, which reauthorized the Elementary and Secondary Education Act, provides that each SEA must reserve “not less than 15 percent and not more than 30 percent of the amount such agency receives under [Title I] for any fiscal year” to support the following:

1. Projects that facilitate the transition of children and youth between state-operated institutions, or institutions in the state operated by the Secretary of the Interior, and schools served by LEAs or schools operated or funded by the Bureau of Indian Education; or
2. The successful reentry of youth offenders, who are age 20 or younger and have received a regular high school diploma or its recognized equivalent, into postsecondary education, or career and technical training programs, through strategies designed to expose the youth to, and prepare the youth for, postsecondary education, or career and technical training programs, such as:
 - a. Preplacement programs that allow adjudicated or incarcerated youth to audit or attend courses on college, university, or community college campuses, or through programs provided in institutional settings;
 - b. Worksite schools, in which institutions of higher education and private or public employers partner to create programs to help students make a successful transition to postsecondary education and employment; and
 - c. Essential support services to ensure the success of the youth.

Pub. L. No. 114-95, Sec. 1418.

V. **RELEVANT COURT AND AGENCY DECISIONS REGARDING TRANSITION ISSUES FOR DISCUSSION**

- A. Gibson v. Forest Hills Local Sch. Dist. Bd. of Educ., 68 IDELR 33 (6th Cir. 2016) (unpublished). The district's failure to timely conduct transition assessments, in addition to its failure to consider the student's preferences and needs denied FAPE. The district's failure to invite the student to an IEP meeting for postsecondary transition planning was a harmless procedural violation, because even if the student had attended the confrontational meetings—a decision that would have exposed her to yelling, slamming doors and general animosity—she would not have been able to articulate her wishes. However, the failure to assess the student's transition needs resulted in a loss of educational opportunity, where the district's evaluation largely consisted of observing her performing assigned tasks, such as wiping tables and shredding documents, which offered little insight into her preferences and interests. In addition, a third-party vocational assessment conducted when the student was 19 recommended further evaluation of her interests, stamina and ability to improve with repetition, which was not done. Thus, the district failed to develop an appropriate transition plan. If the student had received additional training and assessments, she could have worked in a supported setting rather than attending a non-vocational program as suggested by the district.
- B. C.W. and W.W. v. City Sch. Dist. of the City of New York, 67 IDELR 186 (S.D. N.Y. 2016). School district did not deny FAPE to the 11th-grader with an intellectual disability and speech-language impairment when it failed to invite him to an IEP meeting that addressed postsecondary transition goals and services. The IEP team's inclusion of the student's preferences and interests in the transition plan made his absence from the meeting a procedural error, because the IDEA requires a district to invite the student to an IEP meeting if one of the subjects of that meeting will be postsecondary transition planning. However, the postsecondary transition plan is a procedural requirement of the IDEA and, as such, the parents cannot obtain relief without demonstrating some form of substantive harm. Here, the IEP team considered input from one of the parents and representatives from the student's private school, all of whom attended the IEP meeting in question, and the plan addressed the student's interest and skills in art. Therefore, while the district's unexcused failure to invite the student to the meeting is "troubling," it did not result in the development of an inappropriate transition plan. In addition, the team's development of an IEP goal that related to the student's work-related self-advocacy, communication, and interpersonal skills made up for the failure to develop objective measurement criteria for the student's single postsecondary transition goal.
- C. M.M. v. New York City Dept. of Educ., 65 IDELR 103 (S.D. N.Y. 2015), *aff'd*, 68 IDELR 32 (2d Cir. 2016) (unpublished). Though the district failed to conduct postsecondary transition assessments of the autistic 18-year-old, the student's IEP contained appropriate transition goals and services despite the procedural violation. The IEP team had sufficient information about the student's needs to develop an appropriate program, including a private evaluation report done in 2009, parent input, teacher feedback and progress and transition reports from the private school that the student 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 information to develop a comprehensive transition plan. As a result, the district's failure to conduct transition assessments did not result in substantive harm or deprive the parent of the right to participate in the IEP process. Thus, the parent failed to show a denial of FAPE.

- D. Joaquin v. Friendship Pub. Charter Sch., 66 IDELR 64 (D. D.C. 2015). Although the court acknowledges that the teenager's failure to regularly attend school impeded the school's ability to implement his IEP, the school still should have provided the student with postsecondary transition services called for in his IEP on days that he attended. This lack of transition services is a material IEP implementation failure warranting compensatory education based upon the proportion of transition services required to those that were actually provided, and the goal and import of the specific service that was withheld. Here, the student's postsecondary transition plan included 45 minutes of college and career preparatory services each day, but the student did not receive any transition services between April and October 2013. Thus, the hearing officer's finding that the lack of transition services was a harmless procedural violation is rejected, particularly where transition services were the primary means by which the school implemented the student's "Post-Secondary Transition Plan," which aimed to help him realize his short-term goals of determining admissions requirements for two-year colleges or trade schools and his long-term goals of attending such a college or school for the purpose of becoming a mechanic. While the student's truancy impacted upon the school's implementation of the Plan, the fact that the student did not receive any transition services, regardless of his attendance problems, violated the IDEA. Thus, the case is remanded to the hearing officer for a determination of the student's need for compensatory education or other relief.
- E. R.R. v. Oakland Unif. Sch. Dist., 62 IDELR 287 (N.D. Cal. 2014). District's motion to dismiss is granted where there were 3 months left before the student turned 16 and time left to incorporate a postsecondary transition plan into the student's IEP. While the case will be dismissed, the district should convene an IEP meeting, so the student will have an appropriate transition plan in place on his 16th birthday. In addition, the parents' 504 claims are dismissed because there is no right to postsecondary transition planning under Section 504.
- F. D.C. v. Mount Olive Township Bd. of Educ., 63 IDELR 78 (D. N.J. 2014) (unpublished). Courts are not to evaluate IEPs in hindsight and must consider the evaluative data available at the time an IEP is developed and determine whether the IEP was reasonably calculated to provide an educational benefit. While the former high school student with autism did not ultimately attend college, pursue a career in computer animation, or live independently as set out in his postsecondary transition plan, the plan was not inadequate at the time it was written. The IEP identified agencies that offered vocational services as required by state law and the district administered a career interest inventory and entered the results into its college and career planning software program. In addition, no member of the student's IEP team stated a belief that the student's wish to attend college and work in theater arts was unrealistic or unachievable.

- G. Jefferson Co. Bd. of Educ. v. Lolita S., 62 IDELR 2 (N.D. Ala. 2013), aff'd, 64 IDELR 34 (11th Cir. 2014) (unpublished). Where the student turned 16 during the 2011 year, the IEP for the 2011-12 school year was required to include individualized transition goals, transition assessments and transition services. Where there was no transition assessment done, the IEP is inappropriate. Further, the court does not agree that the student received adequate transition services where the vocational and career-based training he received was also provided to the rest of the freshman class and, therefore, was not individualized to his unique needs. The vague statement on the IEP that “student will be prepared to participate in post-secondary education,” appears to confirm that the IEP is using “stock language” that is not individualized, particularly where the evidence indicates that the student is on an AOD track. Finally, the court does not agree that the student’s alleged depression and low cognitive functioning means that he is not “positioned” to receive a more substantial transition plan.
- H. Maksym v. Strongville City Sch. Dist., 61 IDELR 294 (N.D. Ohio 2013). The district appropriately addressed the transition needs of a high schooler with brain damage and cerebral palsy and the services provided, taken in their entirety, are reasonably calculated to enable the child to benefit. While the parent alleged that his eighth-period placement as an aide in the guidance office for two days per week was just “idle time” for him, it contributed to his employability skills. While the parent argued that no learning took place during 8th period, the parent failed to point out any requirement that every minute of every school day must provide the maximum educational benefit. Here, the student’s IEP focused on the student’s functional skills, including reading, math and vocational skills, to enable him to transition into adult life and the 8th period placement furthered these goals. In addition, the student made progress during the school year toward those goals and the student’s participation as an “office aide” in the guidance office provided in-school work experience to foster his employability.
- I. In re: Student with a Disability, 61 IDELR 90 (SEA Mont. 2013). The Montana ED ordered the district to conduct transition assessments and develop an appropriate transition plan for high schooler with autism. While the student’s severe communication difficulties impeded the district’s ability to evaluate his post-secondary needs, the district still has an obligation to conduct age-appropriate transition assessments on which to base postsecondary goals. It is noted that the district has since contacted the Montana Autism Education Project and received recommendations for appropriate assessment tools.
- J. Dighton-Rehoboth Reg’l Sch. Dist., 113 LRP 35900 (SEA Mass. 2013). For student diagnosed with paraphilia (a condition characterized by abnormal sexual desires regarding young children), PTSD and cognitive deficits, whose goal was to work in the auto industry and to live independently, it was essential for him to develop the ability to adhere to societal norms, to respect boundaries, to behave appropriately and to work cooperatively. These skills “were critical to his ability to successfully transition to the community and work,” yet the district did not address the student’s inappropriate sexual behavior and thoughts, or his difficulty interacting with others, in his transition plan.

- K. Larimer Co. Sch. Dist., 113 LRP 17986 (SEA Colo. 2013). In this SEA Complaint, the State Department finds that the district was not responsible for implementing a student's BIP at the site of the student's internship. The businesses where the ED student worked as part of a postsecondary transition program were not run by school employees and were not otherwise under the district's control. When the student crashed a company car and fled from the scene of an accident the district removed the student from the internship program. While the district is required to ensure that its service providers are implementing a student's IEP/BIP, the "internship training sponsors" who oversaw the student at work were not school employees and, therefore, were not responsible for implementing the student's BIP.
- L. Los Angeles Unif. Sch. Dist., 113 LRP 39561 (SEA Cal. 2013). Where IEP had not considered travel training as a transition service for a student who would need public transportation to get around his community is a denial of FAPE. "Failure to provide students with an opportunity to learn how to use public transportation erects barriers to community inclusion."
- M. 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 determine whether it is necessary before placing a student there as part of a transition program. A transition placement, including a work placement, is no different than any other educational placement in that it cannot be unnecessarily restrictive. Thus, 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." 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.
- N. Carrie I. v. Department of Educ., 59 IDELR 46, 869 F.Supp.2d 1225 (D. Haw. 2012). District's proposed public school program is not appropriate where the IEP team relied upon a prior version of the IDEA when developing the student's transition plan. Rather than merely identifying the agencies responsible for providing transition services to the teenager with autism and Landau-Kleffner syndrome, the ED was required to conduct age-appropriate transition assessments, develop appropriate postsecondary goals and identify the services needed to reach those goals. The lack of these assessments alone is enough to constitute a "lost educational opportunity." In addition, because the state's vocational rehabilitation agency was likely to be responsible for providing or funding transition services for the student, the ED should have invited a representative of that agency to attend the IEP meeting. These procedural failures resulted in a denial of FAPE.
- O. Questions and Answers on Secondary Transition, 57 IDELR 231 (OSERS 2011) (revised

Q&A from 2009). While postsecondary goals relating to training and education may sometimes overlap, IEP teams may develop combined postsecondary goals in those areas where appropriate. However, postsecondary goals relating to employment must be separate from those relating to training and education. 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, 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.” In determining whether training and education goals overlap, the IEP team should consider the student’s unique disability-related needs and the student’s plans after high school. IEP teams are not prohibited from developing separate goals for training and education and separate goals may be appropriate in some instances. Further, because employment is distinct from training and education, IEP teams cannot combine a student’s postsecondary employment goals with training and education goals.

- P. Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities, U.S. Department of Education, Office for Civil Rights, 2011. Neither the high school nor the postsecondary school is required to pay for a new evaluation to document disability and need for an academic adjustment. “This may mean that you have to pay or find funding to pay an appropriate professional to do it. If you are eligible for services through your state vocational rehabilitation agency, you may qualify for an evaluation at no cost to you.” (this document can be downloaded from www.ed.gov/ocr/transition.html).
- Q. Rodrigues v. Fort Lee Bd. of Educ., 57 IDELR 152 (3d Cir. 2011). The district’s transition plan for the student with cerebral palsy is appropriate where it included assessments and goals related to training, education, employment, independent living skills, and transition services. In addition, the student was provided with information as to agencies that would provide transitional services and an extensive checklist of what needed to be accomplished during her senior year to aid in transition. A social skills class was also created for her. While the third circuit has not defined what amount of transition planning is required in an IEP to ensure FAPE, the plan here was appropriate.
- R. Dutkevitch v. Pennsylvania Cyber Charter Sch., 57 IDELR 32 (3d Cir. 2011) (unpublished). Parents’ discrimination claims are dismissed and they cannot recover the \$75,000 cost of their son’s postsecondary transition program from either a Pennsylvania district or the vocational school that refused to give him an application. This is so because the student’s online charter school was responsible for arranging transition services. The charter school is the student’s LEA under the IDEA. As such, it was responsible for providing the student FAPE, and 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 a recommendation because it ‘was not [the student’s] LEA’ and thus ‘was not required to make sure [the student] received ... computer training.’” Similarly, 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. Thus, there is no evidence that the district or the school excluded the student on the basis of disability.

- S. K.C. v. Nazareth Area Sch. Dist., 57 IDELR 92 (E.D. Pa. 2011). District's transition services for student with Prader-Willi syndrome were appropriate and student is not entitled to compensatory education services. Although parents' rehabilitation consultant testified that the student's travel training services could have been improved, the district had no obligation to maximize the student's potential. Instead, the district needed only to ensure that the student's travel training resulted in meaningful benefit. The evidence demonstrated that the student benefited "immensely" from her travel training services, as she was now able to travel around Philadelphia. In addition, the student received services in the area of employment, where she learned skills such as resume writing and job interviewing, and she attended a life skills summer program and participated in a community services club. Finally, the student made progress on transition goals related to handling and calculating money.
- T. Sebastian M. v. King Philip Reg. Sch. Dist., 56 IDELR 204, 774 F. Supp. 2d 393 (D. Mass. 2011), aff'd, 59 IDELR 61, 685 F.3d 79 (1st Cir. 2012). The parents of a high school student with an intellectual disability failed to establish that their son's IEPs were substantively deficient. Based upon 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, an award of reimbursement for the cost of a residential program is rejected. 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. However, his parents believed the district wasn't doing enough, based upon the student's meltdowns at home. For that reason, they placed him in a residential program and filed a due process claim, alleging the student was denied FAPE. The student's IEPs were appropriate, even though they did not contain an actual transition plan. Although an IEP must contain statements of transition services, 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. Tindell v. Evansville-Vanderburgh-Posey Spec. Svs. Coop., 57 IDELR 71, 805 F. Supp. 2d 630 (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, the fact that the district failed to have those goals in place by the student's 16th birthday did not amount to a denial of 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. Though the delay in transition planning amounted to a procedural violation of the IDEA, the student's anxiety prevented him from participating in transition services until he entered the residential program in June 2008. Thus, the delay did not result in a loss of educational benefit. More importantly, the student met or made progress toward his transition goals while

attending the residential program and, 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. While the student still was unable to use public transportation without assistance, 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.” In addition, the student satisfied his transition goals as well as the academic requirements for graduation. Thus, the student’s graduation was appropriate.

- V. J.D.G. v. Colonial Sch. Dist., 55 IDELR 197, 748 F.Supp.2d 362 (D. Del. 2010). School district’s proposed IEP for middle school student with Down syndrome is appropriate where it offered a structured classroom setting to address the student’s needs and set goals that contemplated the provision of services that would build on his strengths while preparing him for independent living. The IEP’s focus upon teaching the student to function independently in the community is justified based upon his limited academic potential and need to focus upon postsecondary transition. It was appropriate for the IEP team to cease its focus on rote memorization skills and repetitive academic drills desired by his parents. Clearly, the parents did not believe that the proposed IEP was rigorous or challenging enough, but they did not show that the shift in the IEP’s focus was inappropriate.
- W. High v. Exeter Township Sch. Dist., 54 IDELR 17 (E.D. Pa. 2010). Although transition plan of high school junior with LD focused on college preparedness, that did not invalidate an IEP goal for her to read at a 6th grade level by the end of the school year. IDEA does not require a student’s transition plan to dictate 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.” It is important that when the student returned to the district after 2 years of private schooling, she was reading at a 4th grade level and she was reading at a 6th grade level by the end of that school year.
- X. J.L. v. Mercer Island Sch. Dist., 52 IDELR 241, 575 F.3d 1025 (9th Cir. 2009). The district court’s determination that Congress superseded the Rowley decision in the 1997 IDEA Amendments is reversed. Had Congress sought to change the FAPE “educational benefit” standard—a standard that courts have followed vis-à-vis Rowley since 1982—it would have expressed a clear intent to do so. Instead, Congress did not change the definition of free appropriate public education in the law. In addition, Congress did not indicate in its definition of “transition services,” or elsewhere, that a disabled student could not receive FAPE absent the attainment of transition goals. Third, Congress did not express disagreement with the “educational benefit” standard or indicate that it sought to supersede Rowley. “In fact, Congress did not even mention Rowley.”
- Y. K.C. v. Mansfield Indep. Sch. Dist., 52 IDELR 103, 618 F. Supp.2d 568 (N.D. Tex. 2009). The parents’ argument that the Rowley standard is no longer applicable to IDEA

cases because the 1997 IDEA amendments embodied “high expectations for [disabled] children” is rejected. Rowley continues to provide the standard for deciding an action brought under the IDEA. In addition, the parents’ position that the district disregarded the teenager’s interest in music when developing her transition plan was not enough to support a request for private tuition reimbursement. The transition plan, which reflected the student’s strong interests in fashion and child care, was reasonably calculated to provide FAPE to her. 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.” 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. Thus, 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. As a result, the district is not obligated to pay for the student’s placement in a music academy for students with cognitive disabilities.

- Z. Lessard v. Wilton-Lyndeborough Cooperative Sch. Dist., 49 IDELR 180, 518 F.3d 18 (1st Cir. 2008). Lessard v. Wilton-Lyndeborough Cooperative Sch. Dist., 49 IDELR 180, 518 F.3d 18 (1st Cir. 2008). With respect to the argument that the transition plan was procedurally inappropriate, the court noted that the plan consisted solely of background information and performance goals and suddenly ended mid-sentence. “This is hardly a full-fledged transition plan. The rub, however, is that the IDEA does not require a stand-alone transition plan as part of an IEP.” Thus, merely pointing to the absence of a stand-alone transition plan cannot form the basis for a founded claim of procedural error. The fact is that the transition services for the student were integrated throughout the IEP’s various components. In addition, the parents’ argument that the 1997 IDEA’s transition requirements supplanted the Rowley standard and raised the bar for the provision of IEP transition services and directs that those services must result in actual and substantial progress toward integrating disabled children into society is rejected. The Court refused to defenestrate the Rowley standard for FAPE and concluded that the district court did not apply an incorrect legal rule in evaluating the adequacy of the transition services set forth in the student’s IEP.
- AA. Strock v. Indep. Sch. Dist., 49 IDELR 273, 2008 WL 782346 (D. Minn. 2008). The fact that the student was required to take certain remedial courses at the community college “is neither unusual nor evidence of ‘unsuccessful transition,’ an entirely undefined term.” Being required to take a course which approximately 60% of a student’s fellows must take is scarcely evidence of unsuccessful transition. The student achieved placement examination scores which were sufficient to allow him to attend college, and the court finds, as a matter of law, that the student’s transition to the community college does not constitute actionable “unsuccessful transition,” if indeed such a claim exists at all.

- BB. Mr. and Mrs. C. v. Maine Sch. Admin. Dist. No. 6, 49 IDELR 281, 538 F.Supp.2d 298 (D. Me. 2008). The parents' argument that the 2004 IDEA amendments increased the substantive goals for the education of disabled students (namely in the field of outcome-oriented academic and transition services) so that the goals now go beyond simply opening the door to public education is rejected. Given the ubiquity of Rowley in the context of IDEA proceedings, one would expect Congress (or the Department of Education) to speak clearly if the intent were to supersede it.
- CC. Polk County Sch. Bd., 108 LRP 32010 (SEA Fla. 2008). Where it was the school system's "clear goal" to award sufficient academic credits to graduate the student from the school system with a "regular" diploma, regardless of whether other services were adequately delivered, and the school system failed to identify appropriate transition services in the IEPs, compensatory education is warranted. The student will receive compensatory education services for up to five years and the school system will bear the expense of placement at a special school at an expense of up to \$144,000 annually.
- DD. Sinan L. v. Sch. Dist. of Philadelphia, 48 IDELR 97, 2007 WL 1933021 (E.D. Pa. 2007). The court rejects the parents' argument that the failure to mention training for vocations and practical living in the student's transition plan made it incomplete. The IDEA provides that transition planning should be "based upon the individual student's needs, taking into account the student's preferences and interests" and "*when appropriate*," should provide for "acquisition of daily living skills and functional vocational evaluation." There is no support in the case law for the parents' proposition that the district had an affirmative duty to provide for vocational and practical training in all transition plans, and the hearing officer found that this student's transition plan's focus on college planning to the exclusion of practical training was appropriate for the student given his parents' rejection of any vocational outcome. Thus, the transition plan's focus on college planning was appropriate, given the student's needs, preferences and interests at the time.
- EE. Marple Newtown Sch. Dist. v. Rafael N., 48 IDELR 184 (E.D. Pa. 2007). Once the student turned sixteen, the district did not provide a meaningful transition plan for the student. A review of the student's IEPs showed that while they do incorporate vocational and independent living skills, the goals are vague and do not capitalize on the student's strengths or specific interests. The IEPs state generic goals that have remained static from year to year and none of the student's vocational or independent learning outcomes contains a community component. The IEPs also do not include a component to prepare the student for medical self-monitoring and, most importantly, do not take into account the student's strengths or preferences. Thus, the student is entitled to three academic years of compensatory education.
- FF. Letter to Moore, 39 IDELR 189 (OSEP 2002). At age 16, a transition plan must specify needed transition services and interagency responsibilities so the student is able to leave high school and, if applicable, function independently. However, evaluations and plans developed in high school do not affect a student's eligibility for academic accommodations in a postsecondary institution. As for testing required by colleges, there

is no IDEA requirement that districts arrange for testing to determine whether a student will be eligible for services after high school.

Similarly, in response to a request that the regulations clarify whether a public agency must provide updated evaluations for college testing and admissions purposes, the US DOE responded in the regulatory commentary that:

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. While the requirements for secondary transition are intended to help parents and schools assist children with disabilities transition beyond high school, section 614(c)(5) in 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. 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.

71 Fed. Reg. 46644.

VI. SOME TIPS TO ENSURE COMPLIANCE WITH THE IDEA'S TRANSITION REQUIREMENTS

1. Use all transition resources available in your State!
2. Identify the student's strengths, preferences and interests and identify appropriate post-school goals
 - a. What does the student want to do after exiting public school?
 - b. Where does the student want to live?
 - c. What does the student want to do in terms of community participation?
 - d. Gather information through age-appropriate transition assessments
 - i. Interest inventories
 - ii. Person-centered planning
 - iii. Curriculum-based assessments
 - iv. Employability skills inventories
 - v. Adaptive behavior inventories

- vi. Life skills inventories
 - vii. Aptitude tests
 - viii. Personality scales or inventories
 - ix. Vocational skills inventories
 - x. Social skills inventories
- e. Provide direct, hands-on opportunities for the student to determine what he/she realistically can do either with or without accommodations or further education and training.
 - f. Provide the student with opportunities to try work and life experiences based upon expressed interests.
3. Adequately describe the student's present levels of educational performance
4. Define appropriate statement of transition service needs
- a. What courses should be taken for graduation or completion of public school?
 - b. What courses should be taken that will move the student toward his/her post-secondary goals?
 - c. Do the parents and the student understand the meaning of various graduation options?
5. Design an appropriate statement of transition services
- a. Invite the student to the meeting and solicit participation
 - b. If the student does not attend, ensure other steps are taken to ensure that the student's interests and preferences are taken into consideration
 - c. Develop an appropriate plan that is outcome-oriented and addresses what the student will learn in school and the student plans to do after his/her exit from school
 - d. Determine what services, supports or programs the student currently needs to achieve his/her post-school goals
 - e. Identify when during the school year each activity will be addressed and prioritize the activities for the upcoming school year
 - f. Identify what agency or specifically who will be responsible for ensuring participation in and payment for each activity

- g. Determine additional services, supports or programs the student will need to successfully enter the adult world
- h. Ensure that linkages are created to the identified post-school environment or activity
- i. Ensure that transition services appropriately include instruction, related services, community experiences, employment and other post-school adult living environments and, if appropriate, acquisition of daily living skills and a functional vocational evaluation
 - i. Instruction: To complete needed courses for graduation or exit; succeed in the general curriculum; and gain needed skills
 - ii. Related services: To benefit from special education and to enter the adult world with linkages to post-school environments/agencies
 - iii. Community experiences: Work experiences, job-site training, banking, shopping, transportation, counseling or recreation
 - iv. Employment and other post-school adult living experiences: Services leading to a job or career (preparing resume, interview skills), services that support community life activities, such as registering to vote, filing taxes, renting/buying a place to live, accessing medical and emergency services, including adult benefits such as SSI and other insurance
 - v. Acquisition of daily living skills: Every day adult activities, including meal preparation, budgeting, home maintenance, paying bills, caring for clothing, grooming and taking medication
 - vi. Functional vocational evaluation: Assessment of job and career interest and skills, including use of situational assessments, observations, or formal measures
- j. Ensure the development of cooperative agreements/arrangements with outside agency or other representatives who will be involved in providing or payment for transition services