

Legal Requirements for Transition Components of the IEP

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Note: This article is part of a longer article, [Writing IEPs for Success](#). Dr. Barbara Bateman is the author of [Writing Measurable IEP Goals and Objectives](#), [Developing Transition Component of the IEP](#), [Self-Advocacy](#), [Confidentiality](#), [Discussion](#), [Joe's IEP Non-form](#)

Introduction

Transition services must be included in all IEPs when the student reaches age 16 and may be included for younger students if deemed appropriate by the IEP team (*OSEP Letter to Anonymous*, 17 EFLR 842). Preventing school drop-out is to be a major factor in determining when transition services are needed (*OSEP Letter to Bereuter* 20 IDELR 536). See also [Appendix A to IDEA 97](#)

Transition services are a coordinated set of activities that promote movement from school to such post-school activities as post-secondary education, vocational training, employment, adult services, independent living and community participation. They must be based on the individual student's needs, taking into account his or her preferences and interests. Transition services must include instruction, community experiences, and development of employment and other post school adult living objectives. If appropriate, daily living skills and functional vocational evaluation may also be included.

If the IEP team determines an individual student does not need services in one or more of these areas the IEP must contain a statement to that effect and the basis upon which the determination is made (*OSEP Letter to Cernosia* 19 IDELR 933).

See [Joe's Non-Form IEP transition component](#) for an example of such a statement regarding employment. Before the student leaves school the IEP must also contain, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages (including financial) for the transition activities (34 CFR 300.346(d) and comment).

The IEP meeting must include a representative of the public agency providing and supervising the transition activities and, if appropriate, representatives of other participating agencies. In almost all situations the familiar district representative required for all IEP meetings would qualify as this representative. If appropriate, the student should also be there to ensure her or his needs, preferences, and interests are addressed. It is difficult to imagine circumstances where it would not be appropriate for a student who has a learning disability to be at the meeting. If the student cannot attend, other methods of participating must be used (34 CFR 300.344(c)(3)).

The **ultimate responsibility for providing transition services rests with the school district (or state education agency if district fails)** and there is **no provision for a waiver of this requirement**.

Thus it applies to all public agencies to whom IDEA applies and, if a participating agency defaults on service provision, it is the school that must find an alternative way to provide the service. However, nothing in IDEA relieves a participating agency of any of its responsibility for serving or paying for services for that student.

Two 1994 due process hearings against an Iowa district resulted in rulings that the district's failure to provide appropriate transition planning and services precluded the district from graduating the student and obligated it to provide further vocational programs (*Mason City Comm. Sch. Dist.* 21 IDELR 241 and 21 IDELR 248).

Developing the Transition Component of the IEP

The **transition component of the IEP** is just that, a part of the student's regular IEP. It is not a parallel document, a separate thing, or a "transition IEP." All the IEP development requirements and procedures discussed earlier also apply to the transition component. The legal significance of transition, being but one aspect of the IEP process, is substantial. A student is entitled to those transition services which for that student are either special education or related services necessary to enable the student to benefit from special education. The period of "benefit" to be considered has arguably been lengthened beyond school and into adult life, but the substantive entitlement is still to special education and related services, not to those plus transition services.

One logical beginning point for the transition component is with the team reaching agreement about the **individual student's needs** with regard to the three mandated areas of:

- a) instruction;
- b) community experiences; and
- c) employment and other post-school living objectives.

If the team deems it inappropriate to address an area, presumably because the student presents no unique needs, the IEP must include the basis for that determination. The student's needs, taking into account interests and preferences, can be explored prior to the meeting and substantial input should also be sought from the parents. Questionnaires are appropriate.

Zigmond (1990) has studied extensively secondary programs for students with learning disabilities and suggested four major areas of program need.

First, many of these students need, and too few receive, **intensive basic skills instruction**. Too many programs slight basic skills altogether, believing it is too late while others require students to "do" basic skills activities, but provide next to no real instruction. What Zigmond calls "**Survival Skills**" includes explicit instruction needed by most LD students in behavior control, teacher-pleasing and study skills including test taking.

The third need is for successful completion of **courses required for graduation**. As schools suffer funding cut backs, so-called basic level courses in math and English often disappear, leaving IEP teams to struggle with issues of granting graduation credit for resource room courses or for extensively modified regular courses. One legally correct solution is for the district to establish what the essential, minimum requirements are for credit toward graduation. Those may be rigorously adhered to, as long as reasonable modifications are allowed in how the requirement is met. The IEP should lay out these understandings clearly and explicitly.

Transition needs are the last area Zigmond addresses. She points out that about 12 to 30% of graduating LD students go on to college and they, of course, have transition needs related to selecting and applying to a school. She also notes that vocational education programs in high school are not necessarily a better ticket to job success than are more academic programs. We are left realizing, again, that many secondary programs still need improvement and that we must truly look, in the IEP process, at the individual needs and situation of each student.

Self-Advocacy

One of the most important additional skills needed by many students who have learning disabilities is **self-advocacy**. The student's presentation of his or her needs at the IEP meeting may itself provide one opportunity to assess and discuss self-advocacy skills. Another concern for some students with learning disabilities is passing the examinations required to obtain a driver's license.

Using the same basic three-step inquiry process used in the rest of the IEP and with self-advocacy and obtaining a driver's license as the student's needs we can illustrate the inclusion of transition services on the IEP. This Non-Form is nearly identical to that used earlier to show Joe's IEP. The only difference is that the present level of performance is included in the first rather than last column. That is just another way of doing it and is unrelated to the fact we are illustrating transition.

It is important to note that the Secretary of Education has acknowledged that not all the IEP content requirements, especially goals and objectives, are appropriate for all transition services (FR 44847, discussion of 34 CFR 300.346). No IEP team should use time or energy trying to fit transition needs and services into a format including annual goals and objectives unless it truly makes sense to do so.

Confidentiality of IEPs

Many secondary teachers report they have no idea which of their students, if any, are on IEPs and that they never see the IEP even when they are informed a student has one. This is sad, perhaps sometimes even tragic. By its very nature a good IEP is always helpful and sometimes essential in providing an appropriate program for the student. Rarely is a student's disability so mild or limited that she or he requires no modifications or accommodations in regular middle school or high school classes.

When this process of hiding IEPs from teachers is questioned the common answer suggests a belief that confidentiality would be violated if IEPs were shared. While it is true IEPs are education records and must be treated as such, the **Family Educational Rights and Privacy Act (FERPA)** has an exception which is pertinent. Under Reg. 99.31(a) of the FERPA regulations, an educational agency may disclose personally identifiable information from the education records of a student without the written consent of the parent "if the disclosure is to other school officials, including teachers, within the educational institution or local education agency who have been determined by the agency or institution to have legitimate educational interests" in that information.

Furthermore, even if there were a confidentiality problem under state law or district policy it could be readily solved by parental permission to share the IEP with all teachers. Parents should insist teachers have copies of the IEP, even if it means they themselves must provide them to the teachers. Of course, it should go without saying that the IEP should not contain any information beyond what is required. It would not be appropriate, e.g., to include the category of disability or an intelligence score, etc.

Discussion

We are all new at incorporating transition services into the IEP and into the broader world. Few rulings are yet available to assist us in understanding new requirements. Already a few areas of confusion are emerging. Several are in the direction of an unduly expansive reading of the new regulations.

First, the transition activities which must be addressed, unless the IEP team finds it unnecessary, are: (a) instruction; (b) community experiences; and (c) the development of objectives related to employment and other post-school areas. There is a tendency to confuse these three requirements with the post-school activities to which the three are to be directed, i.e., post-secondary education, vocational training, employment, adult services, independent living, etc. Many "lists" are available which can be seen as suggesting the IEP must address the latter directly rather than the former.

A second source of confusion is that by erroneously viewing the transition component of the IEP as a thing unto itself it is easy to forget that IDEA entitles the student who has a disability only to special education and related services. The transition services to which a student is entitled must fit the definition of one or the other. Therefore, each required transition service must be either specially designed instruction to meet the students' unique needs (taking into account his preferences and interests) or it must be required to enable the student to benefit from that instruction. The fact that transition services must qualify as either special education or related services may not pose a significant limitation since one could argue that almost any transition service is necessary to enable the student to reap the benefits of all the special education she or he has had to date.

A third overly broad reading is the failure to recognize that "student's preferences and interests" refers to determining the student's needs, not to delineating the services to be provided (34 CFR 300.18(b)(1)(2)). One way to approach the question of student needs is to envision a typical weekday and a typical weekend after secondary school. Is the student still living in his or her parents' home? Has she gotten an apartment? Does he know how to find apartment ads in the classifieds? How to respond to an ad? How to locate the address?

The exact process the IEP team goes through in looking into a student's post-school future and planning for it will differ from student to student, as it should. The essential elements which will not vary include student and family participation and the willingness of the IEP team to address all the areas of need-intensive and effective basic skills instruction (not just exposure and not just repetitious practice), explicit survival skills, graduation requirements, and transition.

Properly used, the IEP can be an extraordinarily useful tool in building the future we desire for our students who have learning disabilities.

JOE'S IEP NON-FORM (TRANSITION)

Student's Needs into account preferences & interests)	Special Education & Related Services Agency Linkages (L & R) to be P	Goals & Objectives
<p>INSTRUCTION</p> <p>1. Self-Advocacy (PLOP): presently Jim is unaware of his legal rights under Section 504 and ADA, and unable to express the accommodations he would need in given situations in such a large class</p>	<p>1. Small group instruction from Special Ed teacher in relevant rights & procedures under Section 504, ADA, IDEA</p> <p>Role-playing as describing needed accommodations to "employers" and "professors" (Services to begin Tuesday, Sept. 15, two 30-minute sessions weekly until goals are met.)</p> <p>(L & R) Protection & Advocacy will assist teacher and provide materials at no cost. Verified by phone - M. Adams.</p>	<p>1. Goal: Appropriately explain to a potential employer, professor, or other representative of the post-school world what accommodations are needed and, if necessary, the basis for the request.</p> <p>Objectives: 1. By Dec. 15, Jim will pass (75%) of a 25-item objective test over basic rights and procedures under Sec.504 and ADA.</p> <p>hypothetical situations of common denial of rights under Sec.504 or ADA, correctly explain possible actions and defend choice of actions to be taken.</p>
<p>COMMUNITY</p> <p>2. Driver's License (PLOP): Jim has been driving for a year on a learner's permit and is concerned he cannot pass the test required for his license, although he is confident of all his driving and related skills except map reading.</p>	<p>2. Within two weeks the driver training instructor will inform Jim about accommodations in the state, if any, for licensing people with learning disabilities. Then she and Jim will develop a plan to follow through and that plan will be added to this IEP no later than Oct. 10.</p> <p>Instruction in appropriately obtaining assistance in (a) route highlighting and (b) map drawing will be incorporated in self-advocacy practice above.</p> <p>(L & R) DMV will assist instructor and will provide information on test accommodations. Verified by phone - J. Hill.</p>	<p>2. Goal: Jim will be a competent, licensed driver in Jefferson state prior to June 15 and will be able to obtain and follow highlighted maps and line maps.</p> <p>Objectives: 1. By Dec. 1, Jim will be able to describe correctly 8 of 10 times how he would get from A to B following a highlighted map and will 8 of 20 times succeed in getting clerks, gas station attendants or others to assist him in drawing a line map with approximate distances and major landmarks.</p> <p>15, Jim will score at least 70% on practice exams, administered under actual conditions.</p>

Reference

Zigmond. N., (1990). Rethinking secondary school programs for students with learning disabilities. Focus on Exceptional Children, 23,1,1-22.

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