



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

NOV 21 2002

Honorable Dennis Moore
House of Representatives
Washington, DC 20515-1603

Dear Congressman Moore:

In a letter concerning [REDACTED] you raised four questions regarding the evaluation, transition and other requirements for children with disabilities in secondary schools. We address each of your questions separately below as it relates to the Individuals with Disabilities Education Act (IDEA), which this Office of Special Education Programs (OSEP) is responsible for administering.

1. *It seems that [REDACTED] Individual Education Plan [Program] (IEP) did not lay the groundwork for him to make a seamless transition from high school to college. How does the existing IEP structure ensure that students are prepared for college?*

One of the key purposes of the IDEA Amendments of 1997 was to “promote improved educational results for children with disabilities through early intervention, preschool, and educational experiences that prepare them for later educational challenges and employment.” (H. Rep. No. 105-95, p. 82 (1997); S. Rep. No. 105-17, p. 4 (1997)). Thus, throughout preschool, elementary, and secondary education, the IEPs for children with disabilities must, to the extent appropriate for each individual child, focus on providing instruction and experiences that enable the child to prepare himself or herself for later educational experiences and for post-school activities, including formal education, if appropriate, employment, and independent living.

The regulations under Part B of the IDEA set forth specific requirements related to transition planning and transition services that must be implemented by no later than ages 14 and 16. These requirements focus on preparing students with disabilities for their move toward, and life following, completion of high school. The Part B regulations at 34 C.F.R. §300.347(b)(1) require that each student’s IEP, beginning no later than age 14, include specific transition-related content that focuses on the student’s courses of study, and, beginning no later than age 16, include a statement of needed transition services. Specifically these regulations state:

Beginning at age 14 and younger if appropriate, and updated annually, each student’s IEP must include: “... a statement of the transition service needs of the student under the applicable components of the student’s IEP that focuses on the student’s courses of study (such as participation in advanced-placement courses or a vocational education program)”. 34 C.F.R. §300.347(b)(1)(i) (emphasis added).

Beginning at age 16 (or younger, if determined appropriate by the IEP team), each student's IEP must include: "... a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages." 34 C.F.R. §300.347(b)(2) (emphasis added).

Congressional Committee Reports on the IDEA Amendments of 1997 make clear that the requirement added to the statute in 1997 that beginning at age 14, and updated annually, the IEP include "a statement of the transition service needs" is "... designed to augment, and not replace," the separate, preexisting requirement that the IEP include, "... beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services. ..." H. Rep. No. 105-95, p. 102 (1997); S. Rep. No. 105-17, p. 22 (1997). As clarified by these Reports, "The purpose of [the requirement in §300.347(b)(1)(i)] is to focus attention on how the child's educational program can be planned to help the child make a successful transition to his or her goals for life after secondary school." H. Rep. No. 105-95, pp. 101-102 (1997); S. Rep. No. 105-17, p. 22 (1997).

"Transition services" is defined at 34 C.F.R. §300.29 to mean:

... a coordinated set of activities for a student with a disability that -- (1) Is designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (2) Is based on the individual student's needs, taking into account the student's preferences and interests; and (3) 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 functional vocational evaluation.
34 C.F.R. §300.29.

While §300.347(b)(1) requires that the IEP team begin by age 14 to address the student's need for instruction that will assist the student to prepare for transition, §300.347(b)(2) requires that by the time the student turns 16, the IEP must include a statement of needed transition services under §300.347(b)(2) that includes a "coordinated set of activities ... designed within an outcome-oriented process, that promotes movement from school to post-school activities...." The type of activities is broadly defined under §300.29 and must be individualized for each student. Thus, beginning by age 14, the IEP team, in determining appropriate measurable annual goals (including benchmarks or short-term objectives) and services for a student, not only must determine what instruction and educational experiences will assist the student to prepare for transition from secondary education to post-secondary life, but must include under §§300.29(ii)-(v): related services, community experiences, employment experiences, other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluations.

2. *Upon entering college, [REDACTED] did not have the testing required to prove his need for accommodations or additional services in college. How often are secondary schools required to provide testing? Are they required to provide testing at the request of the parents?*

Your inquiry asks about the requirements for evaluations and reevaluations of children with disabilities under the IDEA when children are in high school. An "evaluation" under the IDEA is defined as "procedures used ... to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs." 34 C.F.R. §300.500(b)(2). An evaluation conducted by a high school under the IDEA is not intended to determine whether a child is eligible for academic adjustments in college under either Section 504 of the Rehabilitation Act or Title II of the Americans with Disabilities Act.

Evaluations and reevaluations under the IDEA are conducted to determine whether a child is eligible for services under Part B of the IDEA. 34 C.F.R. §300.500(b)(2). Once a child is receiving services under the IDEA, under §300.536, each school district must ensure that the IEP of each child with a disability is reviewed periodically, but no less than annually. In addition, the school district must ensure under this regulation that a reevaluation is conducted "if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every three years." 34 C.F.R. §300.536(b). The information obtained in an evaluation or reevaluation is integral to the determination of the special education and related services (including transition services) a child needs under §300.346 and the child's educational placement under §300.552. If the child's parent requests a reevaluation, the school must either: (1) conduct the reevaluation in conformance with 34 C.F.R. §§300.532 through 300.535; or (2) provide parents with written notice of the school's refusal to conduct a reevaluation. 34 C.F.R. §300.503(a)(1)(ii). However, as you may know, graduation with a regular high school diploma ends a student's eligibility for services under Part B of the IDEA.

If a parent requests that a reevaluation or additional assessments be performed on his or her child (for purposes other than determining continued eligibility of the child) and the public agency refuses, the agency must provide notice to the parent under §300.503 that includes an explanation of why the agency is refusing to conduct the reevaluation. The parent may challenge the public agency's refusal to conduct the reevaluation by requesting a due process hearing under §300.507(a) and may also attempt to resolve the issue with the agency through mediation under §300.506(a). If the parent initiates a due process hearing, the parent or the attorney representing the child also must provide notice to the public agency that describes the nature of the problem. The parent may also file a State complaint under the procedures described at §§300.660-300.662 if the parent believes that the action taken by the agency violates a provision of IDEA or its implementing regulations.

3. *Do high schools have the responsibility under the IDEA law to prepare students for college by arranging testing required by the college?*

Under the IDEA, the determination of what evaluations a child needs or are appropriate is an individual one made by a group of individuals consistent with IDEA §§300.530-300.536. As

noted in response to question two above, parents of children with disabilities in high school have the right to request a specific assessment, as part of a reevaluation, if they believe it is necessary to determine whether their child continues to have a disability under IDEA or to identify the special education and related services (including transition services) their child needs. There may be a difference of opinion as to whether additional data, assessments or reevaluations are necessary particularly if a child's continued eligibility under IDEA is not in question. The denial of the parents' request for additional evaluation or assessments is subject to the notice provisions and dispute resolution procedures are discussed in the response to question two above.

Under §300.347(b), the IEP team must begin by age 14 to address the student's need for instruction that will assist the student to prepare for transition and the IEP must include by age 16 a statement of needed transition services under §300.347(b)(2) that includes a "coordinated set of activities ... , designed within an outcome-oriented process, that promotes movement from school to post-school activities" (§300.29) Section 300.344(b)(3) further requires that, in implementing §300.347(b)(1), public agencies (in addition to required participants for all IEP meetings), must also invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. Thus, §300.347(b)(2) requires a broader focus on coordination of services across, and linkages between, agencies beyond the SEA and LEA.

Under both the statute and the regulations, parents have the right to request an assessment, as part of a reevaluation, to determine whether their child continues to have a disability under IDEA. If the group reviewing the existing data does not believe additional data are needed to determine a child's continued eligibility under IDEA, but the parents want additional testing for reasons other than continued eligibility under IDEA, such as admission to college, the denial of the parent's request would be subject to due process.

As stated earlier, graduation with a regular high school diploma ends a student's eligibility for Part B services, and is, therefore, a change in placement requiring notice under §300.503 a reasonable time before the public agency proposes to graduate the student. The requirements for transition planning and for reporting to parents regarding the progress of their child, together with the notice to them regarding proposed graduation, are sufficient to ensure that parents are appropriately informed to protect the rights of their child. The parents have the option, as with any public agency proposal to change the educational program or placement of a child with a disability, to seek to resolve a disagreement with the proposal to graduate the student through all appropriate means, including mediation and due process hearing proceedings.

While the requirements for transition planning and the availability of reevaluations and procedural safeguards under the IDEA are all intended to help parents and schools assist an individual child in transitioning beyond high school, there is no specific requirement under the IDEA that high schools must arrange for all students with disabilities to be tested to determine their eligibility to be considered students with disabilities in college.

4. *What rights does [REDACTED] have under the Americans with Disabilities Act with regard to his college education?*

OSEP is responsible for administering the IDEA. We have referred your question on the Americans with Disabilities Act (ADA) to the:

U.S. Department of Education
Office for Civil Rights (OCR)
Customer Service Team
Mary E. Switzer Building
300 C Street, SW
Washington, D.C. 20202
1-800-421-3481

We enclose a copy of OCR's publication "Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities" released July, 2002, which may provide you with basic information about rights under Section 504 of the Rehabilitation Act of 1983 and Title II of the ADA. The web-site link is <http://www.ed.gov/offices/OCR/transition.html>. We have asked OCR to respond directly to your question and you will receive their response under separate cover.

Finally, with regard to your interest in the reauthorization of the IDEA, the Department of Education (Department) takes the reauthorization process very seriously. In preparation for IDEA reauthorization, the Assistant Secretary for Special Education and Rehabilitative Services hosted many public forums designed to gather input regarding the reauthorization of the IDEA. In addition, on January 10, 2002, the Department published in the Federal Register a notice requesting written comments from the public on the IDEA to assist in preparing for the Act's reauthorization. The President's Commission on Excellence in Special Education has issued its report regarding recommendations for the reauthorization of the IDEA. As the Department moves forward in the reauthorization process, it will take into consideration the comments received, as well as the recommendations of the Commission. At this time, no decision has been reached regarding recommendations that will be made concerning the reauthorization of IDEA.

We hope your questions about transition and evaluation requirements under the IDEA have been addressed. Should [REDACTED] have further questions concerning special education programming in the State of Kansas, the following individual should be contacted:

Ms. Zoann Torrey
Team Leader, Student Support Services
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Topeka, Kansas 66612-1182
(785) 291-3097
ztorrey@ksde.org

If you have further questions, please do not hesitate to contact me or Dr. JoLeta Reynolds at (202) 205-5507.

Sincerely,

A handwritten signature in cursive script that reads "Patricia J. Gurd for".

Stephanie S. Lee
Director,
Office of Special Education Programs

cc: Ms. Zoann Torrey