

TASC/ NAPAS
Q&A on Transition Services Pursuant to the Individuals with Disabilities Education Act

June, 2004¹

Produced by the Maryland Disability Law Center

Q: What are the transition requirements for students with disabilities? Must transition services be provided to students on school grounds? Can transition services ever be provided in the form of compensatory services for a student whose IEP was not implemented appropriately or who is entitled to compensatory services because of wrongful graduation?

A: For students beginning at age 14, or younger if appropriate, a statement of transition service needs must be included on the IEP. For students beginning at age 16, or younger if appropriate, the IEP must include a transition plan. No, transition services do not have to be provided on school grounds. Transition services should be provided wherever it makes sense and is appropriate for the services to be appropriate, whether on school grounds, at a community college, at a work site, or at another location. Yes, transition services may be provided as compensatory services if that is an appropriate means of delivering compensatory services to the student and the student wants the services.

Transition services are defined in the federal regulations at 34 C.F.R. 300.29:

- (a) As used in this part, *transition services* means 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 postsecondary 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;
 - (v) If appropriate, acquisition of daily living skills and functional vocational evaluation.

¹ Produced by the Maryland Disability Law Center with a grant from the Training and Advocacy Support Center at the National Association of Protection and Advocacy Systems (NAPAS) Inc. Support for the development of this document comes from a federal interagency contract with the Administration on Developmental Disabilities (ADD), the Center for Mental Health Services (CMHS), and the Rehabilitation Services Agency (RSA).

- (b) Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

The required statement of transition service needs is generally a statement about what the student's courses of study will be as the student enters high school. Will the student take vocational education? Advanced placement courses? 34 C.F.R. 300.347(b)(1). As more and more states have begun to require exit examinations for high school diplomas, the transition service needs statement has become even more important, because decisions must be made earlier about whether students are likely to obtain diplomas. The courses they will take, the accommodations they will need, and any alternative examinations they might need to take all must be discussed and addressed by the IEP team early enough so that no options are foreclosed.

The required transition plan, as the definition makes clear, is a much more detailed and potentially much more creative plan for moving a student from school to post-school. It must include a statement of interagency responsibilities or any needed linkages between agencies. 34 C.F.R. 300.347(b)(2). There is no requirement in the IDEA that transition services be provided on school grounds. An issue that comes up frequently, especially for many 18-21 year old students is that while they are entitled to services under the IDEA, their peers without disabilities are no longer in school and, understandably, they do not want to be receiving services in a high school setting with younger students. School-based IEP teams, however, are not necessarily willing or able to think about alternative ways of delivering meaningful special education services, including transition services to older students with disabilities.

However, if the team follows the requirements of the IDEA by taking into account the interests and preferences of the student, invites community agencies to participate in the transition process, and thoughtfully considers what the student needs to be able to know and do when he or she leaves school, then the transition plan will be a more useful document, and the team may be willing, especially with participation by an attorney or advocate for the student, to consider implementation of the plan at a location other than the student's school. For some students, provision of transition services at a community college might be appropriate. For other students, a job site might be a better place for implementation of their transition plans. For still other students who have multiple severe disabilities, the appropriate transition might be a transfer to an adult day program funded by the school system until the state's developmental disabilities agency picks up funding when the student turns 21 and exits the school system. As with any IEP service, it is necessary to consider the individual student's needs when developing the transition plan.

It is important, however, to recognize that beyond the IDEA's requirements regarding placement, there is no entitlement to transition services in a particular location. In *Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720 (10th Cir. 1996), 24 IDELR 465, the family sought implementation of the student's IEP, including his transition services, in

his neighborhood school. The court held that neighborhood school placement was not required by the IDEA, and that although the student's IEP did not contain a transition services statement, he had been receiving transition services and was not entitled to compensatory services.

It is also important to distinguish between the type of service provided and the location of the service. The Office of Special Education Programs has noted, in the context of compensatory services, that the IDEA does not authorize a school district to provide a student with compensatory education through the provision of instruction or services at the postsecondary level and that, therefore, if a student is awarded compensatory services for a denial of a free appropriate public education, the services must be the type of educational and related services offered as part of the elementary and secondary school education provided by the State. *See Letter to Riffel*, 34 IDELR 292.

What this means, then, is that a student who is continuing to do high school level (or lower level) work but who does not wish to remain in high school might appropriately receive his or her special education services in accordance with a transition plan that calls for the provision of services on a community college campus. However, this ruling would not make the local school system responsible for provision of academic services to a student who could do college-level work. Presumably, however, a student who is able to do college level academic work will either have graduated or will need transition services of a different nature from the local school system, such as independent living skills. Many community colleges offer transition programs for students with disabilities designed to enable them to make the transfer from high school to college. The academic component often is not at a college level. With creative advocacy, it is possible to design an individualized transition plan that meets the student's needs and fits within the parameters of the IDEA.

When developing a transition plan, IEP teams tend to think about education and work, and perhaps living arrangements. They tend to invite the vocational rehabilitation agency to meetings. If the student has developmental disabilities or mental health issues, they may involve the state developmental disabilities or mental health agency, but may not involve other community agencies or think about other issues. However, transition is much broader than simply education, work, and where a student who has left the school system will live. In addition to the goals related to continued education and to work, the IEP team should be asking and answering questions such as: Will the student be able to travel to and from work or school independently? By public transportation? Driving? Does the student need driving lessons? Travel skills? Does the student know how to use a telephone independently? Can the student advocate for him or herself? Can the student make doctor's appointments? Does the student understand the concept of a budget? Can the student pay bills? Shop for groceries? Shop for clothing? Relate to salespeople? Whether the student will be likely to be living alone or not, the team should determine how independent the student will be likely to be able to be and prioritize, with the student's involvement, the goals that should be included in the transition plan. *See, e.g., Yankton School District v. Schramm*, 93 F.3d 1369 (8th Cir. 1996), 24 IDELR 704 (student with cerebral palsy had excellent grades, hoped to attend college out-of-state,

and wanted transition services that would include specially designed driver's education, self-advocacy, and independent living skills).

Sometimes older students become entitled to compensatory services because they are wrongfully graduated or because their IEPs have not been implemented or because they have been otherwise denied a free appropriate public education. Case law is clear that even if a student has graduated, the entitlement to compensatory education for a denial of a free appropriate public education does not disappear. *See Letter to Riffel*, 33 IDELR 188 (Student's decision to graduate is separate from hearing officer's decision to award compensatory education) and *Letter to Riffel*, 34 IDELR 292 (Student's graduation does not automatically relieve the district of responsibility to provide compensatory education and related services previously awarded. Compensatory education can help a student in the broader educational purposes of the IDEA such as obtaining a job or living independently). Case law is also clear that compensatory services may be appropriately awarded to students beyond the age of 21. *See, e.g., Lester H. v. Gilhool*, 916 F.2d 865 3d Cir. 1990); *Murphy v. Timberlane Regional Sch. Dist.*, 93-1828 (1st Cir. 1994). Often, the appropriate form of compensatory service for these students is transition services. However, the same issue arises about where the services should be delivered because the high school setting is no longer an appropriate place for these young adults to be every day. As discussed above for the delivery of initial transition services, nothing in the IDEA or in current case law precludes the provision of compensatory services at a community college, a worksite, home, or other location that is appropriate to the student's needs. As the OSEP *Letter to Riffel* makes clear though, OSEP takes the position that the provision of college-level instruction would be precluded by the IDEA.²

The provision of transition services as part of a community college program or at a worksite has several advantages. First, it ensures that the student is placed in a setting with other people of similar ages. Second, it does not guarantee, but certainly increases the chances that the student will be in a setting with people without disabilities, thus meeting the least restrictive environment provisions of the IDEA. Third, for students who may have difficulty generalizing skills, it enables them to work on their goals in the settings in which they need those skills, rather than in the isolation of a high school setting.

The IDEA regulation's definition of "transition plan" is detailed and useful, and it offers attorneys and advocates a powerful opportunity to create meaningful educational programs for students as they get older. Particularly given the broad Congressional purposes of the IDEA to foster independence and participation by people with disabilities in their communities, making transition planning happen the way the law intended is essential.

² It should be noted, however, that the Maryland Disability Law Center has, on occasion, obtained community college tuition payments for students by a local school system as compensatory services in the longstanding systemic reform case *Vaughn G. v. Mayor and City Council of Baltimore*.

