

I. Transition Cases

1.

115 LRP 3632

In re: Student with a Disability

Indiana State Educational Agency

December 22, 2014

The fact that a high schooler with an undisclosed disability was not physically present when an Indiana district developed his transition plan was insufficient to establish an IDEA violation. Noting that the transition plan was tailored to the student's interests, the Indiana ED closed the parent's state complaint. According to the parent, the district violated the IDEA by failing to include the 17-year-old in the IEP meeting in which it determined his transition services and goals. The ED explained that, under the IDEA, a district must invite a student to an IEP meeting if the purpose of the meeting is to develop his postsecondary transition plan. In this case, the ED noted, the student was unable to participate in the development of his transition plan because he became ill the day of the IEP meeting. However, the ED opined that the district took other, appropriate steps to ensure that the transition plan helped the student pursue his dream of receiving a high school diploma and attending college. The evidence showed that the IEP team used data from multiple transition assessments, such as the student's areas of strength and his progress in the general education curriculum, to develop his transition services and goals. Moreover, the ED observed that the district conducted a "preferences" interview for the student in order to determine his desires and wishes for postsecondary life. In fact, testimony revealed that staff members helped the student research at least two colleges and helped him request testing accommodations for several college entrance exams, including the SAT and ACT. The district even wrote a letter to the College Board on behalf of the student in support of his accommodations request, the ED pointed out. It closed the complaint, finding that the district satisfied the IDEA's requirements.

2.

115 LRP 3792

Reynolds School District

Oregon State Educational Agency

December 15, 2014

A student's school absences and uncertainty about what kind of career he wanted were no excuse for an Oregon district's minimal transition services. The student with LD was twice withdrawn from the district due to excessive absences. During his junior year, the district developed an IEP for him that included transition goals and services. However, the teen had little idea of what he wanted to do in life, and the district never completed a transition assessment. The student's parent filed a state complaint, claiming that the district failed to provide transition services in accordance with the IDEA. The Oregon ED noted that no later than the first IEP in effect when a child turns 16, the IEP must contain transition services, including courses of study, designed to aid the student in achieving post-secondary goals. 20 USC 1401(a)(19). The ED first observed that the

district failed to provide any transition services until six months after the student turned 16. Next, the ED acknowledged that the district developed transition goals and services, but these were minimal, the ED explained. The IEP stated that the student's goals were to attend community college and work in a job other than retail or food service. It further stated that the services to be provided were taking an art class and working with a transition specialist. Although art was apparently the only elective available, the student had never shown any interest in or aptitude for it, the ED pointed out. In addition, the student met with the transition specialist only once and was simply told to contact the specialist if he needed help applying for college. The district argued that the student's absence from school during the transition assessment periods and inability to articulate his interests prevented it from developing a viable transition plan. But the ED emphasized that "a student's absence does not constitute a good reason for failing to engage in transition planning as transition assessments ... can happen any time based on student availability." The ED concluded that the district failed to provide the student with transition services and a course of study that would help him achieve his post-secondary goals. It ordered the district to take corrective action.

3.

115 LRP 69

Bloomfield Public Schools

Michigan State Educational Agency

October 23, 2014

A Michigan district's good intentions couldn't make up for its failure to follow IDEA procedures when staff changed the way a student's IEP accommodation was implemented. A high school senior needed enlarged copies of all worksheets and assignments. The teen was allegedly forced to either leave class to make the copies or take pictures with a computer tablet and enlarge the print. The student's parent filed a complaint with the state ED claiming that the district failed to implement the student's IEP. The Michigan Department of Education noted that under 34 CFR 300.324(b)(1)(ii)(D), a district must review and revise an IEP to address a student's anticipated needs. The district explained that because the teen was college-bound, staff was encouraging self-reliance. Using the tablet, the student now knew how to scan assignments and convert them into large-print electronic documents while seated at a desk, the district pointed out. However, the student's IEP required the district to provide enlarged copies of notes and assignments at the beginning of class, observed the ED. If the student needed to become more self-reliant by learning to use technology to make enlarged copies, the ED remarked, the district should have convened an IEP meeting and revised the IEP. It also should have provided the parent with written notice of any change to the IEP, the ED explained. Because the district neither implemented nor revised the IEP, it was noncompliant with the IDEA and state law, concluded the ED.

4.
115 LRP 7200
In re: Student with a Disability
New York State Educational Agency
October 17, 2014

A New York district's failure to discuss a student's postsecondary transition needs at an IEP meeting led an SRO to affirm an IHO's grant of tuition reimbursement. The parents of the student with autism and a heart condition placed him at a private school. The district offered placement in a specialized public school. The parents alleged that the public placement and IEP were inappropriate and couldn't meet the 14-year-old's transition needs. They filed for due process. An IHO awarded them reimbursement for a year's tuition at the private school. The district appealed, claiming that its IEP offered the student FAPE. SRO Howard Beyer explained that state regulations required that an IEP for a student who was turning 15 must include measurable postsecondary goals based on appropriate transitions assessments and the transition services necessary to reach those goals. The SRO also emphasized that an IDEA procedural violation was a denial of FAPE if it impeded a student's right to FAPE, deprived the student of educational benefit, or impeded parental participation. The district argued that although the IEP left the transition goals blank, this was an administrative oversight, and other goals addressed the student's long-term vocational plans. The SRO noted that the IEP contained goals addressing post-secondary transition, but there was no evidence that those goals were based on the student's transition needs, the SRO pointed out. Significantly, the district couldn't demonstrate that it discussed postsecondary transition at the IEP meeting, observed the SRO. The school psychologist was unable to recall any discussion on transition, and her meeting notes contained no mention of a transition plan, the SRO remarked. With no documentation indicating that it considered the student's transition needs when developing the IEP, the district couldn't demonstrate that the teen's parents were given an opportunity to meaningfully participate in the development of transition goals and services, the SRO noted. Because the district impeded the parents' participation and deprived the student of the benefits of postsecondary transition services, the SRO upheld the IHO's decision.

5.
64 IDELR 228
114 LRP 46881
Concord Carlisle Regional School District
Massachusetts State Educational Agency
October 9, 2014

The proposed IEP for a student with intellectual, developmental, and language impairments and ADHD required additional services with regard to social needs but was otherwise appropriate, determined a Massachusetts IHO. The 19-year-old's post-secondary program focused on vocational experiences and life skills instruction. She assisted at a local preschool with the goal of becoming a daycare teaching assistant, worked in the school store, and volunteered at the food pantry and public library.

Because her district was small, she had few peers at school and was the only girl in her group. Despite her friendly personality, she had some weaknesses in the area of social skills. Her parents became concerned that she had no friends and spent her free time alone in her room. They suggested a placement in a larger city with more social activities and vocational opportunities. When the district insisted that its placement was appropriate, the parents filed for due process. An IHO explained that the IDEA guarantees children with disabilities a results-oriented program to facilitate their transition to post-secondary activities, including employment, independent living, and community participation. However, while educational programs must be reasonably calculated to offer FAPE, they need not be the best available option, the IHO emphasized. The teen's parents argued that she wasn't progressing by working at the same locations with little social interaction. They also pointed to her IEP goals, many of which remained static from year to year. But the parents' and the district's experts concurred that the teen required extensive repetition to learn, noted the IHO. Although she continued to work on many of the same goals, school staff maintained that she was making considerable gains in self-confidence and independence through repetition. The IHO decided that her IEP was largely appropriate but agreed that it didn't adequately account for her social needs. Her program centered on job coaching, which took time away from socializing with her peers, and she appeared to have few appropriate peers in her community, the IHO commented. If the district couldn't organize sufficient social programming with peers locally, it was obligated to offer participation in out-of-district social events, instructed the IHO. But provided the district modified the IEP to address social skills, its proposed placement was appropriate, the IHO concluded.

6.

64 IDELR 34

114 LRP 39664

JEFFERSON COUNTY BOARD OF EDUCATION, Plaintiff-Appellant, v. LOLITA S., individually and as parent, guardian, next friend and legal representative of M.S., a minor, and M.S. in his individual capacity, Defendant-Appellee

U.S. Court of Appeals, Eleventh Circuit

September 11, 2014

Given that a teenager with an SLD was reading at a first-grade level when he entered ninth grade, the 11th Circuit concluded that a reading goal based on the state standard for ninth-graders failed to address the student's unique needs. The 11th Circuit held that the deficient reading goal, as well as the district's development of a generic postsecondary transition plan, resulted in a denial of FAPE. The court observed that the IEP team had no evidence that the student's reading comprehension had increased by eight grade levels since the prior school year. Nor did the district offer any services to address the gap between the student's performance and the ninth-grade standards. Noting that the student's name had been handwritten on several pages of the IEP above the name of another child, which had been crossed out, the court determined that the district's "apparent use of boilerplate IEPs" was to blame for the inappropriate goal. "It appears [the student] was treated as any other [student with a disability] during the creation of his IEPs, and was held to the same standards that any student, with or

without a disability, would have been," the three-judge panel wrote in an unpublished decision. The court identified similar defects with the student's postsecondary transition plan. Because the district did not conduct transition assessments, the court observed, the plan called for the student to receive the same vocational and career-based training that was made available to all students. Furthermore, a goal calling for the student to participate in postsecondary education did not account for his placement on an occupational diploma track. The 11th Circuit affirmed the District Court's ruling at 62 IDELR 2 that the district denied the student FAPE.

7.

114 LRP 38615

Cranston School District

Rhode Island State Educational Agency

August 27, 2014

A 19-year-old's successful completion of proficiency-based graduation requirements and state assessments paved the way for a Rhode Island district to award him a regular education diploma and exit him from special education. The teen with Asperger syndrome, ADHD, and a mood disorder was hospitalized in 10th grade after reacting to a bullying incident "in a threatening, self-destructive manner." He attended a psychiatric hospital's day school for 11th and 12th grades. His IEP team developed a transitional IEP which focused on the teen's functional skills and needs. During the eight months covered by the transition plan, the teen was taught weekly meal preparation, personal hygiene, financial and time management skills, and received training on using public transportation. He also received services to assist him with vocational training. When the IEP team proposed to award the teen a regular education diploma and exit him from special education, the parents filed for due process. In their complaint, the parents claimed that the district denied the teen FAPE because he had not met all of his IEP goals. To prevail in their claim, the IHO explained, the parents had to demonstrate that the student did not meet all of the state's academic requirements to receive a regular education diploma. The parents' concerns that the teen still needed assistance with personal grooming and hygiene, taking medication, and with cooking and using kitchen appliances did not negate testimony from several credible witnesses that the teen met all of the proficiency-based requirements to receive a diploma, the IHO noted. The IHO added that when the IEP team developed the transitional IEP, no one objected to the appropriateness of its content or how it would be implemented. In finding that the teen successfully completed the services and goals set forth in his IEP, the IHO credited the testimony of the district's administrator of secondary education. The administrator testified that transition services provided to the teen were designed to assist him in becoming as "independent as possible to be able to access post-secondary activities," not to make the student independent. The IHO denied the petition.

8.
64 IDELR 322
Clarinda Community School District
Iowa State Educational Agency
August 21, 2014

IEPs at a residential foster care facility and school were missing required IDEA elements for postsecondary transition services. A federally funded advocacy group for persons with disabilities decided to follow up on three teens with undisclosed disabilities who were transferred to the Iowa facility from a juvenile home. Limited monitoring and a review of their IEPs revealed that the students were receiving little to no specialized instruction and inadequate transition services. The group filed a state complaint. The Iowa ED observed that postsecondary transition services must include measurable postsecondary goals based on age-appropriate transition assessments relating to training, education, employment, and where appropriate, independent living skills. The ED analyzed the IEPs of multiple students and noted that three of the IDEA's requirements for transition services were not present. First, none of the IEPs contained statements regarding the areas of educational, employment, and living skills that were necessary to prepare the student for life after high school, noted the ED. A district must use the information in each student's transition assessments to identify the appropriate postsecondary areas of expectation for an individual student, the ED explained. Second, the ED noted that the IEPs didn't contain appropriate goals and services for each area of a student's post-secondary expectations. Unless a student's assessments clearly indicate that there is no need for services in a particular area, a district must draft goals for each area, the ED remarked. Finally, the ED noted that the IEPs didn't describe the services, supports, and activities necessary to meet each student's transition needs. A district must provide services that will meet all the postsecondary needs identified on a student's transition assessments, the ED opined. Here, every IEP reviewed contained the same boilerplate language, the ED pointed out, rather than addressing each student's individual needs. Because the IDEA is uncompromising with regard to postsecondary transition, inadequate transition services are inadequate special education, the ED concluded. The ED ordered corrective action, as well as compensatory education for every student who had been at the facility for more than 30 days at the time the corrective action was taken.

9.
63 IDELR 78
D.C. on behalf of T.C. and D.C., Plaintiffs, v. MOUNT OLIVE TOWNSHIP BOARD
OF EDUCATION, Defendant
U.S. District Court, New Jersey
March 31, 2014

Recognizing that a former high schooler with autism did not attend college, pursue a career in computer animation, or live independently as contemplated in his postsecondary transition plan, the District Court nonetheless rejected the parent's claim that the plan was inappropriate. The court held in an unpublished decision that the plan

reflected the information available at the time of IEP development. U.S. District Judge Katharine S. Hayden explained that courts do not evaluate IEPs in hindsight. Rather, a court will consider the evaluative data available at the time of IEP formation and determine whether the student's program was reasonably calculated to provide an educational benefit. As such, Judge Hayden observed, the parent needed to show that the student's transition plan was inadequate at the time of formation. The court ruled that the parent failed to meet that standard. Not only did the IEP identify agencies that offered vocational services as required by state law, but the evidence showed that the district administered a career interest inventory and entered the results into its college and career planning software program. Furthermore, as the ALJ had observed, no member of the IEP team had stated a belief that the student's wish to attend college and work in theater arts was unrealistic or unachievable. As for the district's purported failure to provide transition services, the district's special education supervisor testified that the student met with his guidance counselor about college. "[The supervisor] also testified that she 'discussed' a 'college program that included vocational training for the area of ... sound and lighting, in terms of [the student's] interest in the dramatics,' but that she did not believe that he applied to the program," Judge Hayden wrote. Determining the parent failed to meet her burden of proof, the court granted the district's motion for judgment.

10.

62 IDELR 287

R.R., by and with his parent, ROSLYN R., Plaintiffs, v. OAKLAND UNIFIED SCHOOL DISTRICT, and Gary YEE, individually and in his capacity as Superintendent of the Oakland Unified School District, Defendants

U.S. District Court, Northern District of California

February 28, 2014

A California district's failure to include a postsecondary transition plan in the IEP it developed for a student with multiple disabilities 11 months before his 16th birthday did not entitle the parent to relief for an IDEA violation. Noting that the student would not turn 16 for another three months, the U.S. District Court, Northern District of California granted the district's motion to dismiss the parent's postsecondary transition claim. The district argued that because the student was only 15 years old, it still had plenty of time to convene an IEP meeting and develop a postsecondary transition plan. While the court did not expressly respond to the district's argument, it did point out that the student's 16th birthday was still three months away. In addition, the court observed that the parent's complaint did not set forth specific facts showing that the district violated its duty to develop a postsecondary transition plan. Concluding the parent failed to state a claim, the court granted the district's motion to dismiss. However, the court recommended that the district convene an IEP meeting so the student would have an appropriate postsecondary transition plan in place on his 16th birthday. The court also dismissed the parent's Section 504 claim for postsecondary transition planning, determining that the student did not have a right to such services under the statute.

11.

62 IDELR 261

114 LRP 7352

Jim and Laurie GIBSON, as next friends of Chloe GIBSON, Plaintiffs, v. FOREST HILLS SCHOOL DISTRICT BOARD OF EDUCATION, Defendant

U.S. District Court, Southern District of Ohio

February 11, 2014

An Ohio district that failed to assess the postsecondary transition needs of a high schooler with multiple disabilities had to pay a pretty penny for its oversight. After considering the opinions of both parties' experts, the District Court ordered the district to pay for up to \$35,398 worth of postsecondary transition services. The court observed that the remedy proposed by the parents was not appropriate, as it required the district to provide postsecondary transition services that went well beyond the district's FAPE obligation. However, the court determined that the district's proposal was equally flawed. "The primary problem with [the district's] remedy is that it is limited to assessments," Chief U.S. District Judge Susan J. Dlott wrote. "[The district's] remedy does not provide for the training and other services needed to help [the student] achieve the goals recognized as appropriate in the assessments." Although the student had performed job-related tasks such as folding napkins and wiping tables in the classroom setting, the court pointed out that the district's prolonged failure to conduct a formal transition assessment prevented it from identifying the student's preferences and interests. Without that information, the district could not draft postsecondary transition goals or determine the services the student required to meet those goals. Concluding the district had an obligation to provide services, and not just assessments, the court ordered it to pay for 590 hours of postsecondary transition services and 100 round trips into the community for job training and related tasks. The court also ordered the district to reimburse the parents for the cost of the private assessment they obtained to identify the student's postsecondary transition needs, skills, preferences, and interests.

II Graduation Cases

1.

115 LRP 3489

DEPARTMENT OF EDUCATION, STATE OF HAWAII

Hawaii State Educational Agency

January 8, 2015

A dispute over the termination of a student's special education services came down to what was an appropriate compensatory education award. Pursuant to a state law, the Hawaii ED determined that the student with an undisclosed disability had aged out of special education and related services at 20 years old. Months later, the 9th U.S. Circuit Court of Appeals ruled at 61 IDELR 241 that Hawaii students could receive IDEA services until their 23rd birthday. This student's parents filed for due process the following year, seeking compensatory education from the ED. An IHO explained that compensatory education is discretionary, prospective, and designed to remedy an educational deficit resulting from an educational agency's failure to provide FAPE. State of Hawaii, Dep't of Educ. v. Zachary B., 52 IDELR 213 (D. Hawaii 2009). At a resolution meeting, the ED proposed reinstating the student's IEP and providing compensatory services "for a time equal to the amount of time for the missed services." The parents argued that this wasn't enough to meet the standard for compensatory education. They rejected the ED's offer and contracted the student's former private placement to provide services for three years. The IHO noted that the student's longtime special education teacher, who had resumed teaching the student and conducted a partial assessment, believed that the student's skills had regressed considerably. According to the teacher, the student had fallen behind three grade levels in math and reading and had lost the student's former vibrancy and confidence, gaining weight and becoming withdrawn. The IHO emphasized the teacher's opinion that the student would need not one but three years to regain former skill levels. The ED's proposed award was based on the amount of time the student went without services rather than the extent of the student's regression, the IHO pointed out. But the appropriate standard for compensatory education was what services were necessary "to bring Student to a level Student would have achieved, if the [ED] had not denied Student a FAPE," the IHO observed, not the amount of time that the student was denied FAPE. Therefore, the IHO ordered the ED to provide the three years of services stated in the parent's contract with the private placement.

2.

114 LRP 53687

Waukesha School District

Wisconsin State Educational Agency

October 24, 2014

Failing to review a high school senior's IEP was a violation of the IDEA, determined the Wisconsin Department of Public Instruction. A district convened in January 2013 to

conduct an annual IEP review for the student with an undisclosed disability. No annual review was held prior to the student's graduation with a regular high school diploma at the end of the 2013-14 school year. The Wisconsin ED received a complaint alleging that the district failed to comply with federal requirements for annual review of IEPs. The ED explained that under the IDEA, a student's IEP team must meet at least once a year to determine whether the student is meeting his goals and revise the IEP as appropriate. The annual review of the student's IEP was due in January 2014, the ED pointed out. The district admittedly did not review the student's IEP during the 2013-14 school year, the ED noted. However, emphasizing that the student successfully graduated, the ED did not order any corrective action with respect to the individual student. In addition, the ED observed that when a student's eligibility for special education terminates, districts are required to provide the student with a summary of his academic achievement and functional performance with recommendations for meeting postsecondary goals. The district acknowledged that it also failed to complete the required summary, but it promised to provide one, the ED remarked. The ED ordered the district to submit a plan for corrective action to ensure that the district reviewed all students' IEPs at least annually and completed performance summaries whenever required.

3.

64 IDELR 9

K.S., through her parent, C.S., on behalf of a class of those similarly situated, Plaintiffs, v. RHODE ISLAND BOARD OF EDUCATION, by and through its chair, Eva-Marie MANCUSO, in her official capacity only; WARWICK SCHOOL COMMITTEE, as a representative of a class of Local Educational Agencies similarly situated, by and through its chair, Bethany A. FURTADO, in her official capacity only, Defendants

U.S. District Court, Rhode Island

August 26, 2014

Because a District Court did not need to be well-versed in special education law to determine whether the Rhode Island ED allowed nondisabled students to continue their public education through age 22, a student with Asperger syndrome and other disabilities did not need to exhaust her administrative remedies to challenge the proposed termination of her IDEA services on her 21st birthday. The District Court denied the ED's and the district's combined motion to dismiss. Chief U.S. District Judge William E. Smith observed that the IDEA's exhaustion requirement does not apply when a case involves a purely legal question of statutory interpretation. The court concluded that the legality of the educational agencies' enforcement of a state regulation that terminated students' IDEA eligibility at age 21 fell squarely within the "purely legal question" exception. "While this question requires a very modest factual inquiry into the availability of public education programs to general education students over the age of 21, that question itself is 'not one of fact within the agency's particular expertise,'" Judge Smith wrote. The court also held that the district's voluntary continuation of the student's IDEA services did not make her case moot. Judge Smith noted that the district's prior

written notice about the student's impending exit from special education showed that the student was "in imminent danger" of having her services terminated.

4.

114 LRP 39107

District of Columbia Public Schools
District of Columbia State Educational Agency
August 25, 2014

The District of Columbia dodged providing compensatory education by showing that it didn't terminate an 18-year-old's IDEA eligibility by awarding him a certificate of completion. The IEP team of the student with an intellectual disability determined that it wouldn't be productive for him to remain in high school past age 18. Although the student and his mother were present at the IEP team meetings, they didn't object. The student received his certificate of completion at a graduation ceremony. When the student realized that he was still eligible for special education services, he filed a due process complaint alleging that the district improperly exited him from special education. Before terminating students' eligibility under the IDEA, explained an IHO, districts must first evaluate them, unless they have aged out or graduated high school with a regular diploma. The IHO acknowledged that the student remained within the age of eligibility for FAPE, had never received a regular diploma, and hadn't been evaluated immediately prior to receiving his certificate. However, there was some question as to whether the district had, in fact, terminated his eligibility for special education. The district argued that it hadn't terminated the student's eligibility. It pointed out that eligible students can, and do, reenroll in the district after receiving a certificate of completion. The IHO agreed, observing that this scenario had been documented in court decisions where students with certificates of completion reenrolled or requested IEP team meetings. See, e.g., *District of Columbia v. West*, 54 IDELR 117 (D.D.C. 2010). In this case, by consenting to the IEP team's decision that he should leave school at 18, the student effectively withdrew himself from school voluntarily, explained the IHO. The IHO emphasized that the student never requested an IEP team meeting or attempted to reenroll in school. The district had no way of knowing that he wished to continue receiving special education services, the IHO remarked. Concluding that the student was obliged to request a resumption of services from the district, the IHO denied all relief.

5.

113 LRP 35055

R.T.D., by and through his parents; R.D.; M.D., Plaintiffs-Appellants, v. STATE OF HAWAII DEPARTMENT OF EDUCATION, Defendant-Appellee
U.S. Court of Appeals, Ninth Circuit
August 28, 2013

Because the Hawaii ED made secondary education available to nondisabled students age 20 and older, it could not enforce a state law that allowed it to terminate special education services at age 20. The 9th Circuit held in an unpublished decision that

Hawaii's Act 163, which purported to terminate all students' eligibility for public education at age 20, violated the IDEA. The court adopted its analysis in *E.R.K. v. State of Hawaii Department of Education*, 61 IDELR 241 (9th Cir. 2013), that the ED could not deny special education services to students with disabilities age 18 to 21 if it made public education available to nondisabled students in that same age group. Although the ED claimed its GED and competency-based programs were so different from the traditional high school curriculum that they could not qualify as secondary education, the court pointed out that both programs allowed adults to earn high school diplomas. "Nothing in the IDEA ... supports the proposition that a program constitutes 'secondary education' or 'free public education' only if it is structurally identical to the ordinary public high school curriculum offered to nondisabled students," U.S. Circuit Judge Dorothy W. Nelson wrote in *E.R.K.* Furthermore, the *E.R.K.* court noted that the ED's website described both programs as secondary education courses designed to help participants meet high school graduation requirements. Concluding that the ED made secondary education available to nondisabled individuals ages 20 and older, the *E.R.K.* court ruled that the state's age limit for public education was invalid. Relying on its analysis in *E.R.K.*, the three-judge panel reversed a District Court's decision at 58 IDELR 280 that a 20-year-old student was no longer eligible for IDEA services.

6.

54 IDELR 283

John DOE and Jane DOE, his parent, Plaintiffs, v. MARLBOROUGH PUBLIC SCHOOLS, Defendant

U.S. District Court, Massachusetts

June 30, 2010

A Massachusetts district did not prematurely terminate special education services to a 19-year-old student with a learning disability when he became eligible to graduate from high school. Although the student met the eligibility requirements for graduation, his parent refused to allow him to accept his diploma because, allegedly, he was not prepared for independent living. The parent argued that the student's IEP was not reasonably calculated to enable him to receive educational benefit during his senior year because the student did not make sufficient progress toward his IEP goals. "Absence of progress toward IEP goals per se does not make an IEP inadequate," U.S. District Judge William G. Young wrote. Neither the parent nor the student explained why the IEP was defective, other than to assert that the student made insufficient progress. Relying on the 1st U.S. Circuit Court of Appeals ruling in *Lessard v. Wilton Lyndeborough Cooperative School District*, 49 IDELR 180 (1st Cir. 2008), the District Court reviewed the student's IEP as a snapshot, not a retrospective. "The inquiry is not whether the student was fully prepared for independent living or whether he continued to have significant problems in some areas," the court wrote. Rather, the correct standard for considering a denial of FAPE claim is whether the district, by virtue of a reasonably calculated IEP, made educational benefit available to the student. Because the 12th-grade IEP contained transition services, provided services to address the student's identified areas of difficulty, and was based on the student's 11th-grade IEP,

which was successful, it was reasonable to conclude that the IEP was reasonably calculated to provide the student with educational benefit.

7.
63 IDELR 230
114 LRP 30480
Letter to White
Office of Special Education and Rehabilitative Services
N/A
July 2, 2014

In a letter to the Louisiana ED, both OSERS and OESE "strongly recommended" that the state take steps to ensure that a recently passed state law seemingly empowering IEP teams to set their own graduation standards for students with disabilities is implemented in a manner consistent with the IDEA, ESEA, Section 504, and the ADA. OSERS Acting Assistant Secretary Michael Yudin and OESE Assistant Secretary Deborah Delisle observed that House Bill No. 1015, passed on June 23, 2014, gives IEP teams authority to permit students with disabilities to earn a regular diploma without meeting the academic standards applicable to students without disabilities. The bill further provides that such students must be included among those receiving a regular diploma in calculating high school graduation rates. Yudin and Delisle identified several concerns with the bill. Among those concerns was the fact that the law could violate the ESEA by altering the state's academic content and achievement standards required under 20 USC 1111(b). In addition, they noted that the law could result in students with disabilities being denied post-graduation services. They pointed out that under the IDEA, the duty to provide FAPE continues beyond graduation, potentially until a student's 22nd birthday, unless the student graduated with a regular diploma. 34 CFR 300.102(a)(3)(i). "[W]e are very concerned that, if IEP Teams are permitted to set requirements for high school graduation that are not fully aligned with the State's academic content standards, LEAs will determine that students with disabilities who receive diplomas through the alternative pathway established by HB No. 1015 are no longer entitled to FAPE," Yudin and Delisle wrote. Finally, the assistant secretaries recognized that the law could violate Section 504 and the ADA by resulting in different, potentially lower standards being taught to students with disabilities, "thus depriving them of the same opportunities to learn that are available to their nondisabled peers."

8.
64 IDELR 28
Tacoma School District
Washington State Educational Agency
April 12, 2014

Because an adult student was short on math credits and achieved only basic proficiency in a state reading assessment, a Washington district's decision to graduate the student and exit him from special education denied the student FAPE. The student was found

eligible for special education in kindergarten as a child with an SLD, and received specially designed instruction in math and written language until third grade, and only in math after sixth grade. After he turned 18, the student was diagnosed with ADHD and the district changed his eligibility category to OHI. A second IEP was developed during his senior year of high school, which reduced special education services in math but added study skills training to help him stay on task, complete assignments, and improve his organization and planning skills. After the student graduated from high school, he filed for due process, arguing that the district improperly graduated him because he had not met state or district standards necessary for high school graduation. Finding that the student lacked the necessary math credits and did not achieve a passing grade in a reading assessment, an ALJ concluded that the district should not have graduated him. The ALJ explained that in Washington, a student remains eligible for special education until: 1) after reevaluation, a group of qualified professionals and the student's parent determine that he is no longer eligible for special education; 2) the student reaches age 21; 3) the adult student or his parent revokes special education services in writing; or 4) the student meets high school graduation requirements and graduates with a regular high school diploma. The ALJ noted that because there was no evidence of the first three conditions being met, the district could only exit the student from special education if he met the fourth condition. Here, the student obtained only two of the three credits needed in math. Although he obtained additional math credits in special education classes, his IEP did not specify that he would meet his graduation requirements through such classes, the ALJ observed. In addition, the district allowed the student to "pass" the state reading assessment even though he only achieved a "Level 2" grade, which is not generally a passing grade, as it indicates only basic proficiency in reading. Because the student did not meet the graduation requirements, the ALJ concluded, the district could not exit him from special education.

9.

59 IDELR 53

Tooele County (UT) School District

Office for Civil Rights, Western Division, Denver (Utah)

March 27, 2012

A Utah district could award a student with an undisclosed disability a high school diploma without denying him FAPE. Although the student's mother alleged that the district should have issued her son a certificate of completion, as IEP team members had previously agreed to do, OCR determined that the district did not violate Section 504 or Title II. The mother was counting on her son receiving a certificate of completion so he could continue attending school until age 22. She had hoped that by then, the district would have an adult program he could attend. Providing a student with FAPE means offering him an appropriate education through services that are designed to meet his individual needs, OCR explained. Here, despite the fact that the student's IEP continued to state that he'd receive a certificate of completion, the district had identified him as being on track to satisfy graduation requirements since his third year of high school. It consistently provided the student with the individualized services he required while he was working toward satisfying graduation requirements, OCR observed. IEP

team members explained that certificate of completion provision was included in the IEP because the student would have been eligible to continue receiving services until age 22 and receive a certificate if he somehow failed to meet graduation requirements and receive a diploma before then. By the student's last year of school, he only needed to complete two classes in order to satisfy Utah graduation requirements. With his continued receipt of services, the student finished those classes. Stating that it does not, except in extraordinary circumstances, substitute its judgment for that of a group of persons who are more knowledgeable about a student, OCR concluded that based on the evidence, the district was justified in awarding the student a diploma after determining he fulfilled state graduation requirements.

10.

114 LRP 53687

Waukesha School District
Wisconsin State Educational Agency
October 24, 2014

Failing to review a high school senior's IEP was a violation of the IDEA, determined the Wisconsin Department of Public Instruction. A district convened in January 2013 to conduct an annual IEP review for the student with an undisclosed disability. No annual review was held prior to the student's graduation with a regular high school diploma at the end of the 2013-14 school year. The Wisconsin ED received a complaint alleging that the district failed to comply with federal requirements for annual review of IEPs. The ED explained that under the IDEA, a student's IEP team must meet at least once a year to determine whether the student is meeting his goals and revise the IEP as appropriate. The annual review of the student's IEP was due in January 2014, the ED pointed out. The district admittedly did not review the student's IEP during the 2013-14 school year, the ED noted. However, emphasizing that the student successfully graduated, the ED did not order any corrective action with respect to the individual student. In addition, the ED observed that when a student's eligibility for special education terminates, districts are required to provide the student with a summary of his academic achievement and functional performance with recommendations for meeting postsecondary goals. The district acknowledged that it also failed to complete the required summary, but it promised to provide one, the ED remarked. The ED ordered the district to submit a plan for corrective action to ensure that the district reviewed all students' IEPs at least annually and completed performance summaries whenever required.

11.

114 LRP 45848

Centennial School District
Pennsylvania State Educational Agency
September 12, 2014

Because a Pennsylvania student with ED received a regular high school diploma, the student's parent's request for an IEE was rendered moot. The student attended a

private high school pursuant to an IEP. The student's transition plan involved graduating with a regular diploma so that the student could continue to post-secondary education. After graduation, the district supplied the student with a letter confirming that it anticipated the issuance of a regular diploma. When the student hadn't received it weeks later, the student's parent filed a due process complaint alleging inappropriate diploma issuance and requesting an IEE. The district had apparently just received the student's course completion information from the private school and was in the process of confirming that it met the requirements for a district diploma. The diploma was issued days later. The district argued that when a student graduates from a third-party institution, it must request information from the institution so that it can generate a transcript before issuing a district diploma. Under the IDEA, when a student with a disability receives a regular high school diploma, the student no longer qualifies for special education and related services, and the district is no longer obligated to provide FAPE. 34 CFR 300.102(a)(3). Even though this diploma-issuance technically came after the filing of the due process complaint, the district met its IDEA obligations and acted in good faith to place the student in a position where the student would hold a regular high school diploma as the student moved beyond K-12 education, the IHO pointed out. The IHO also opined that "[t]he District's process in obtaining information from the third-party placement and assuring itself that the student qualified for the diploma under Commonwealth standards was necessary." As soon as the student received the diploma, the district's obligations under the IDEA ended, the IHO explained. The IHO concluded that the district appropriately issued the diploma and dismissed the parent's complaint.

12.

114 LRP 38615

Cranston School District
Rhode Island State Educational Agency
August 27, 2014

A 19-year-old's successful completion of proficiency-based graduation requirements and state assessments paved the way for a Rhode Island district to award him a regular education diploma and exit him from special education. The teen with Asperger syndrome, ADHD, and a mood disorder was hospitalized in 10th grade after reacting to a bullying incident "in a threatening, self-destructive manner." He attended a psychiatric hospital's day school for 11th and 12th grades. His IEP team developed a transitional IEP which focused on the teen's functional skills and needs. During the eight months covered by the transition plan, the teen was taught weekly meal preparation, personal hygiene, financial and time management skills, and received training on using public transportation. He also received services to assist him with vocational training. When the IEP team proposed to award the teen a regular education diploma and exit him from special education, the parents filed for due process. In their complaint, the parents claimed that the district denied the teen FAPE because he had not met all of his IEP goals. To prevail in their claim, the IHO explained, the parents had to demonstrate that the student did not meet all of the state's academic requirements to receive a regular education diploma. The parents' concerns that the teen still needed assistance with

personal grooming and hygiene, taking medication, and with cooking and using kitchen appliances did not negate testimony from several credible witnesses that the teen met all of the proficiency-based requirements to receive a diploma, the IHO noted. The IHO added that when the IEP team developed the transitional IEP, no one objected to the appropriateness of its content or how it would be implemented. In finding that the teen successfully completed the services and goals set forth in his IEP, the IHO credited the testimony of the district's administrator of secondary education. The administrator testified that transition services provided to the teen were designed to assist him in becoming as "independent as possible to be able to access post-secondary activities," not to make the student independent. The IHO denied the petition.

13.

60 IDELR 236

113 LRP 3768

Albuquerque Public Schools
New Mexico State Educational Agency
January 12, 2013

Although a 19-year-old with autism disputed the validity of his graduation from a Texas LEA the previous school year, a New Mexico district had no obligation to provide him with special education and related services. An IHO determined that the official statement of graduation from the state of Texas ended the student's IDEA eligibility. The IHO observed that the IDEA did not require the district to overlook information about the student's graduation. To the contrary, the IDEA expressly states that a student's eligibility for special education services ends when he earns a regular high school diploma. "The provision is absolute in its language," the IHO wrote. "It does not require that a district where the student seeks to enroll determine whether the student meets that district's or that state's graduation requirements." The IHO noted that the student had the right to file a due process complaint in Texas to challenge his former LEA's decision to award a regular diploma. In the meantime, however, the New Mexico district had to honor the Texas LEA's determination that the student had satisfied all graduation requirements. Because the district had received official documentation showing that the student had graduated, the IHO found it that its subsequent failure to provide the student with educational services did not violate the IDEA. The IHO thus dismissed the student's FAPE claim.

14.

59 IDELR 254

T.M. and J.M., on behalf of T.D.M., Plaintiffs, v. KINGSTON CITY SCHOOL
DISTRICT, Defendant
U.S. District Court, Northern District of New York
September 18, 2012

The fact that an 18-year-old with a pervasive developmental disorder had not physically received a diploma at the end of the 2007-08 school year did not require a New York district to continue providing services under the IDEA. Determining that the student's

right to FAPE ended when he met state requirements for a Regents diploma, the District Court held the parents could not recover the cost of subsequent private school services. The court pointed out that New York's education code equates the earning of a Regents or local high school diploma with the receipt of such a diploma. As such, a student's eligibility for FAPE ends when he satisfies state requirements for a Regents or local high school diploma -- regardless of whether he receives an actual document. The court observed that the student had earned 23 credits by June 2008, which was one credit more than he needed for a Regents diploma. Furthermore, the student had passed the required number of Regents examinations. Thus, because the student had earned a Regents diploma, the district did not violate the IDEA by failing to offer the student services for the 2008-09 and 2009-10 school years. The court also noted that the parents acted unreasonably in intentionally withholding transcripts from the private school the student attended during the 2006-07 and 2007-08 school years. "Had the district obtained the transcript in June 2008 when it was first requested, it would have been clear that [the student] had earned a Regents diploma," U.S. District Judge David N. Hurd wrote. The court thus concluded that equities of the case weighed against reimbursement.

15.

54 IDELR 283

John DOE and Jane DOE, his parent, Plaintiffs, v. MARLBOROUGH PUBLIC SCHOOLS, Defendant

U.S. District Court, Massachusetts

June 30, 2010

A Massachusetts district did not prematurely terminate special education services to a 19-year-old student with a learning disability when he became eligible to graduate from high school. Although the student met the eligibility requirements for graduation, his parent refused to allow him to accept his diploma because, allegedly, he was not prepared for independent living. The parent argued that the student's IEP was not reasonably calculated to enable him to receive educational benefit during his senior year because the student did not make sufficient progress toward his IEP goals. "Absence of progress toward IEP goals per se does not make an IEP inadequate," U.S. District Judge William G. Young wrote. Neither the parent nor the student explained why the IEP was defective, other than to assert that the student made insufficient progress. Relying on the 1st U.S. Circuit Court of Appeals ruling in *Lessard v. Wilton Lyndeborough Cooperative School District*, 49 IDELR 180 (1st Cir. 2008), the District Court reviewed the student's IEP as a snapshot, not a retrospective. "The inquiry is not whether the student was fully prepared for independent living or whether he continued to have significant problems in some areas," the court wrote. Rather, the correct standard for considering a denial of FAPE claim is whether the district, by virtue of a reasonably calculated IEP, made educational benefit available to the student. Because the 12th-grade IEP contained transition services, provided services to address the student's identified areas of difficulty, and was based on the student's 11th-grade IEP, which was successful, it was reasonable to conclude that the IEP was reasonably calculated to provide the student with educational benefit.

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