

CORNELL

## *Work Incentive Support Center*

### *Policy and Practice Brief:*

# The Transition from School to Work

**The Special Education and State Vocational Rehabilitation Systems'  
Obligations to Prepare Students with Disabilities for the World of Work**

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This is one of a series of articles written for benefits specialists employed by Benefits Planning, Assistance and Outreach projects and attorneys and advocates employed by Protection and Advocacy for Beneficiaries of Social Security programs. Materials contained within this policy brief have been reviewed for accuracy by the Social Security Administration (SSA), Office of Employment Support Programs. However, the thoughts and opinions expressed in these materials are those of the authors and do not necessarily reflect the viewpoints or official policy positions of the SSA. The information, materials and technical assistance are intended solely as information guidance and are neither a determination of legal rights or responsibilities, nor binding on any agency with implementation and/or administrative responsibilities.

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## I. Introduction

The special education systems in school districts, nationwide, are the starting point for preparing many people with disabilities for the adult world, including the world of work. The federal law governing the obligations of school districts is called the Individuals with Disabilities Education Act (IDEA).<sup>1</sup>

Historically known as Public Law 94-142, the IDEA was initially passed in 1975 and became effective on September 1, 1978. From the beginning, its stated purpose was to help prepare students with disabilities for increased independence and self-sufficiency. The legislative history of Public Law 94-142, after citing statistics showing the lack of adequate special education services for students with disabilities at the time of its passage, underscores this point:

The long range implications of these statistics are that public agencies and taxpayers will spend billions of dollars over the lifetimes of these individuals to maintain such persons as dependents in a minimally acceptable lifestyle. With proper education services, many would be able to become productive citizens, contributing to society instead of being forced to remain burdens. Others, through such services, would increase their independence, thus reducing their dependence on society.<sup>2</sup>

Although the IDEA has been amended several times since 1975, the basic provisions remain the same. It is a sweeping statute. States are given federal money to help meet the costs of educating students with disabilities. In turn, they must agree to comply with the terms of the law. However, the IDEA has yet to live up to its promise, making it all the more important for advocates to be aware of its provisions.

On June 4, 1997, President Clinton signed into law a significant amendment to the IDEA (IDEA '97). On March 12, 1999, the final federal regulations implementing IDEA '97 were published in the Federal Register.<sup>3</sup> IDEA '97 once again emphasizes the importance of the special education system for preparing people with disabilities for the adult world. The Congressional findings that accompany IDEA '97 state:

Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.<sup>4</sup>

This article is designed to provide a basic overview of the requirements of the special education system under the IDEA. It will then review, in greater detail, the specific “transition planning” obligations under the IDEA to prepare students for the adult world as they enter their high school years. It will also discuss how the obligations of the school districts interact with the obligations of the state vocational rehabilitation (VR) agencies<sup>5</sup> and the importance of collaboration between the two systems. Over the years, amendments to both the special education and VR laws have increased the requirements for this

<sup>1</sup> 20 U.S.C. § 1400, *et seq.*

<sup>2</sup> S.Rep. at 9, U.S. Code Cong. & Admin. News 1975, p. 1433.

<sup>3</sup> 64 Fed. Reg. 12406.

<sup>4</sup> 20 U.S.C. § 1400(c)(1).

<sup>5</sup> A separate article in this series, *Vocational Rehabilitation Services Available to Prepare Individuals with Disabilities for Work*, reviews the obligations of VR agencies in greater detail.

type of cooperation to ensure the smooth transition of students with disabilities from school to post-school activities.

This article is written primarily for individuals who work for either a Benefits Planning, Assistance and Outreach (BPA&O) project or a Protection and Advocacy for Beneficiaries of Social Security (PABSS) program, both of which are mandated to serve individuals with disabilities who receive either Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits. It is intended that this article will also be distributed to many SSI and SSDI beneficiaries, their families, and the agencies that serve them.

A major expectation of the BPA&O and PABSS projects is that they reach out to, and serve, beneficiaries who are as young as 14. This includes beneficiaries who are transitioning out of the special education system. For BPA&O staff, this article will provide a grounding in special education law and its transition requirements. For PABSS staff, it will provide a grounding in the law and a foundation for handling special education transition cases, if the PABSS project chooses to take these types of cases.

## II. Overview of the IDEA

### A. Free Appropriate Public Education

The IDEA guarantees that all students with disabilities aged 3 through 21 have the right to a “free appropriate public education” (FAPE).<sup>6</sup> The right to a FAPE ends when a student graduates with a regular high school diploma.<sup>7</sup> This does not include students who have received a certificate of attendance or a certificate of graduation that is not a regular high school diploma.<sup>8</sup>

All services provided under the IDEA must be at no cost to the parents or student.<sup>9</sup> There is no financial needs test under the IDEA. Therefore, children with disabilities are entitled to receive services at no charge, regardless of family income.

To be eligible, the student must meet the definition of one of several enumerated disabilities, such as a speech, mobility, orthopedic, health, hearing or visual impairment, mental retardation, or a learning or emotional disability, and, “by reason thereof,” need special education and related services.<sup>10</sup> Special education is defined as specially designed instruction to meet the unique needs of the child. Related services are defined as developmental, corrective and other support services required to assist a student with a disability to benefit from an education, such as occupational therapy, physical therapy, speech pathology, counseling, health services, and parent training.<sup>11</sup>

In *Board of Ed. of the Hendrick Hudson Sch. Dist. v. Rowley*,<sup>12</sup> the United States Supreme Court set forth the standard for determining whether a student was receiving the appropriate education required by the IDEA. The Court concluded that the obligation to provide an appropriate education does not mean a school must provide the “best” education or one

<sup>6</sup> 20 U.S.C. §§ 1401(8), 1412(a)(1)(B) and 1419(b)(2).

<sup>7</sup> 34 C.F.R. § 300.122(a)(3)(i).

<sup>8</sup> *Id.* § 300.122(a)(3)(ii).

<sup>9</sup> 20 U.S.C. § 1401(8)(A).

<sup>10</sup> *Id.* § 1401(3).

<sup>11</sup> *Id.* § 1401(22) & (25).

<sup>12</sup> 458 U.S. 176 (1982).

designed to maximize a student's potential.<sup>13</sup> However, the program must be based on the student's unique individual needs and be designed to enable the student to benefit from an education. In other words, the student must be making progress.<sup>14</sup> More than a minimal benefit is required for the program to be appropriate. The child's written individualized education program (IEP) must confer "meaningful benefit," which means that it must provide for "significant learning." In determining how much benefit is enough, the student's intellectual potential must be considered.<sup>15</sup>

During the passage of IDEA '97, Congress did not specifically modify the definition of FAPE itself.<sup>16</sup> However, Congress did make some profound statements which seem to undercut the Supreme Court's analysis in *Rowley*. In delineating the purposes of the IDEA, Congress explicitly enlarged the scope of an appropriate education by requiring that not only should it meet students' unique needs, it should also "prepare them for employment and independent living."<sup>17</sup> The U.S. Department of Education, in the commentary to its proposed regulations implementing IDEA '97, stressed:

This change represents a significant shift in the emphasis of [the IDEA]—to an outcome-oriented approach that focuses on better results for children with disabilities rather than on simply ensuring their access to education.<sup>18</sup>

Nevertheless, because the phrase "appropriate" is still used in the definition, it is unlikely that these comments mean that *Rowley* has been effectively overruled by Congress in all circumstances. However, in determining whether a student is benefitting from an education, the analysis cannot be limited solely to academic achievement. Even if a student is making significant academic progress, that can no longer be the end of the inquiry. How well the student is being prepared for the adult world must also be considered.

## B. Least Restrictive Environment

The IDEA requires that all students receive their educational services in the least restrictive environment (LRE).<sup>19</sup> Removal from regular education classes should occur only when the student cannot be successfully educated in that setting, even with supplemental aids and services.<sup>20</sup>

However, in determining the LRE for a student, the program must still be appropriate to meet the student's individual needs.<sup>21</sup> Accordingly, schools must have available a continuum of alternative placements, ranging from services in regular classes to separate classes, separate schools and even residential programs.<sup>22</sup> Moreover, in determining the student's actual placement, it should be as close as possible to the child's home and, unless the written IEP calls for some other arrangement, the child should attend the school he or she would attend if not disabled.<sup>23</sup>

The 1999 regulations emphasize that students with disabilities cannot be removed from age-appropriate regular classrooms "solely because of needed modifications in the general curriculum."<sup>24</sup> Additionally, a student cannot be required to demonstrate a specific level of

<sup>13</sup> *Id.* at 199.

<sup>14</sup> *Id.* at 188, 189.

<sup>15</sup> See *Ridgewood Board of Ed. v. N.E.*, 172 F.3d 238 (3<sup>rd</sup> Cir. 1999); *Polk v. Central Susquehanna Intermediate Unit*, 853 F.2d 171 (3<sup>rd</sup> Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989).

<sup>16</sup> See 20 U.S.C. § 1401(8).

<sup>17</sup> *Id.* § 1400(d)(1)(A).

<sup>18</sup> 62 Fed. Reg. 55029 (emphasis added).

<sup>19</sup> 20 U.S.C. § 1412(a)(5).

<sup>20</sup> 34 C.F.R. § 300.550(b)(2).

<sup>21</sup> *Id.* § 300.550(b)(1).

<sup>22</sup> *Id.* § 300.551.

<sup>23</sup> *Id.* § 300.552(c).

<sup>24</sup> *Id.* § 300.552(e).

performance before being considered for regular class placement. However, the strong preference for placement in regular education does not mean that a student must fail in the regular education environment before a more restrictive setting may be considered.<sup>25</sup> Placement decisions must be based on the needs of the student and not on such factors as the classification of the student, availability of services, “configuration of the service delivery system, availability of space, or administrative convenience.”<sup>26</sup>

## C. Individualized Education Program

The written IEP is the focal point of the IDEA. The Supreme Court called the IEP the “centerpiece of the [IDEA’s] education delivery system.”<sup>27</sup> It is obvious that the process of developing the IEP and the resulting document itself are more than mere technicalities.

### 1. Evaluating the Child

Developing the IEP begins with a comprehensive, individual evaluation. As one court has noted, the evaluation provides the foundation for the IEP. If the evaluation is incomplete, the IEP cannot be appropriate.<sup>28</sup> The parents or the school staff may initiate an evaluation. In either event, before the school may evaluate a student for the first time, it must obtain parental consent for the evaluation.<sup>29</sup> The evaluation is designed to assist the IEP Team in determining whether the student has a disability and, if so, to determine the educational needs of the child.<sup>30</sup> Evaluations must be conducted before the initial provision of services.<sup>31</sup>

If the parents disagree with the evaluation obtained by the school, they may request an independent evaluation at school expense.<sup>32</sup> Parents should submit their request prior to obtaining the evaluation, but this is not required.<sup>33</sup> The school is allowed to ask the parents for the reasons they are disagreeing with the school’s evaluation, but cannot require it.<sup>34</sup> In either event, the school must, without unreasonable delay, either agree to pay for the independent evaluation or initiate a hearing to show its evaluations were appropriate.<sup>35</sup>

### 2. IEP Team Members

The IDEA requires that the IEP be developed at a meeting with a group of people, including the parents.<sup>36</sup> The IEP Team must be composed of the following members:

- (i) the parents of a child with a disability;
- (ii) at least one regular education teacher of such child (if the child is, or may be, participating in the regular education environment);
- (iii) at least one special education teacher, or where appropriate, at least one special education provider [such as a speech pathologist] of such child;

<sup>25</sup> *Id.* Part 300, Appendix (App.) A, Question (Quest.) 1.

<sup>26</sup> *Id.*

<sup>27</sup> *Honig v. Doe*, 484 U.S. 305, 311 (1988).

<sup>28</sup> *East Penn School District v. Scott B.*, 29 Individuals with Disabilities Educ. L. Rep. (LRP Publications) 1058 (E.D. Pa. 1999).

<sup>29</sup> 20 U.S.C. § 1414(a)(1)(C).

<sup>30</sup> *Id.* § 1414(a)(1)(B).

<sup>31</sup> *Id.* § 1414(a)(1)(A).

<sup>32</sup> 34 C.F.R. § 300.502(b).

<sup>33</sup> *Policy Letter to Hon. J. Fields*, 2 Educ. Handicapped L. Rep. (LRP Publications) 213:259 (U.S. Dep’t. of Educ. Office of Special Educ. Programs (OSEP) Sept. 15, 1989).

<sup>34</sup> 34 C.F.R. § 300.502(b)(4).

<sup>35</sup> *Id.* § 300.502(b)(2).

<sup>36</sup> *Id.* § 300.344.

- (iv) a representative of the [school] who—
  - (I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - (II) is knowledgeable about the general curriculum; and
  - (III) is knowledgeable about the availability of resources of the local educational agency;
- (v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);
- (vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (vii) whenever appropriate, the child with a disability.<sup>37</sup>

### 3. IEP Content

The IEP is a written document, setting out in detail the nature of the student's educational needs, the services to be provided and specific goals for the student. The IEP must list the student's current levels of performance, including how the child's disability affects the child's involvement and progress in the general curriculum. The IEP must also list annual goals and short-term objectives or benchmarks. They must be measurable and relate to meeting each of the child's educational needs that result from the disability, including those which will enable the child to be involved and progressing in the general curriculum.<sup>38</sup>

The IEP must include all special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child. It must also list all program modifications, and supports for school personnel which will help the child to: (1) attain the annual goals; (2) participate and progress in the general curriculum, if appropriate; (3) be educated with both disabled and non-disabled peers; and (4) participate in extracurricular and nonacademic activities with both disabled and non-disabled peers. The projected date for initiating all services and modifications, as well as their anticipated frequency, location and duration, must be specified.<sup>39</sup>

The IEP must also include provisions to assist students in making the transition from school to adult living. These are called "transition services," and will be discussed in greater detail below. Beginning at age 14, or younger, the IEP must include the transition service needs related to the child's course of study under each of the applicable sections of the IEP, such as "participation in advanced-placement courses or a vocational education program."<sup>40</sup> Beginning at 16, or younger if appropriate, actual transition services are to begin, including identifying the responsibilities of agencies other than the schools to provide services. The IEP must list all such services. At least one year before a student reaches the age of majority under state law, the IEP must include a statement that the student has been



<sup>37</sup> 20 U.S.C. §

1414(d)(1)(B).

<sup>38</sup> *Id.* § 1414(d)(1)(A)(i) and (ii).

<sup>39</sup> *Id.* § 1414(d)(1)(A)(iii) & (vi).

<sup>40</sup> *Id.* § 1414(d)(1)(A)(vii)(I); 34 C.F.R. § 300.347(b)(1).



informed of any rights that would normally be exercised by the parents that will transfer to the student at the age of majority.<sup>41</sup>

## D. Due Process

Schools must regularly and fully inform parents of their due process rights.<sup>42</sup> Prior to taking any action regarding the student, they must also notify the parents, in writing, of the basis for their action. This notice must include: (1) a description of the action proposed or refused; (2) an explanation of why the school made the decision; (3) a description of any other options considered and an explanation of why they were rejected; (4) a description of the records, reports or evaluations used as a basis for the decision; and (5) a description of any other factors that are relevant to the decision.<sup>43</sup>

Under the IDEA, parents have the right to request an impartial hearing to appeal any actions taken by a school.<sup>44</sup> At the hearing, the parents have the right to be represented by an attorney or other person with specialized training, to compel the attendance of witnesses, to present evidence and to cross-examine witnesses.<sup>45</sup> The parents have the right to a written or, at their option, electronic, verbatim transcript of the hearing.<sup>46</sup> Impartial hearings have become extremely technical and complicated. Therefore, it is highly advisable for parents to contact an attorney or trained advocate if they believe it is necessary to request a hearing. Some PABSS programs may choose to represent transition-aged students at special education hearings where the student is an SSI or SSDI beneficiary and the service that was denied is directly related to a future employment goal.

The decision of the hearing officer is final, unless there is an appeal.<sup>47</sup> States have the option to create a second, state level of administrative review. In that case, either the parents or school have the right to file an appeal to the state.<sup>48</sup> Following the hearing decision or state level decision, if applicable, either the parents or the school have the right to appeal to state or federal court.<sup>49</sup>

### 1. Status Quo: The Right to Retain Existing Services Pending Appeal

The child remains in the current educational placement during all of the appeal proceedings, unless the parent and school or state agree otherwise.<sup>50</sup> This is referred to as “pendency,” “stay put,” or “status quo.” Status quo applies to the services listed in the IEP as well as “the setting in which the IEP is implemented, such as a regular” or self-contained classroom.<sup>51</sup> However, a school may change the location of a child’s classroom within the school district.<sup>52</sup> Status quo is also not intended to require that a student remain in the same grade pending an appeal.<sup>53</sup> Status quo also applies to children moving from one school to another within the state.<sup>54</sup> However, status quo does not apply when a student moves from one state to another.<sup>55</sup>

<sup>41</sup> *Id.* § 1414(d)(1)(A)(vii)(II) & (III).

<sup>42</sup> *Id.* § 1415(b)(3), (c) and (d)(2).

<sup>43</sup> *Id.* § 1415(c).

<sup>44</sup> *Id.* § 1415(b)(6).

<sup>45</sup> *Id.* § 1415(f).

<sup>46</sup> 34 C.F.R. § 300.509(a)(4).

<sup>47</sup> 20 U.S.C. § 1415(i)(1)(B).

<sup>48</sup> *Id.* § 1415(g).

<sup>49</sup> *Id.* § 1415(i)(2).

<sup>50</sup> *Id.* § 1415(j); 34 C.F.R. § 300.514(a).

<sup>55</sup> *Michael C. Ex. Rel. Stephen C. v. Radnor Township School District*, 202 F.3d 642 (3<sup>rd</sup> Cir. 2000), *cert. den.* 531 U.S. 813 (2000); *OSEP Policy Memorandum 96-5*, 24 Individuals with Disabilities Educ. L. Rep. (LRP Publications) 320 (Dec. 6, 1995).



## 2. Mediation

The IDEA now mandates that states and schools have a mediation process available to resolve any and all complaints, at least whenever an impartial hearing is requested. Mediation is to be voluntary and cannot be used to deny or delay a parent's right to an impartial hearing. If a parent does not choose to use mediation, a school or state may establish a procedure requiring the parent to meet with a specified disinterested party to explain the benefits of mediation.<sup>56</sup>

The state shall bear the costs of mediation. The mediators are to be impartial, trained in mediation techniques and knowledgeable of special education law. All discussions during mediation sessions are to be confidential.<sup>57</sup>

## 3. Attorneys' Fees are Available When the Student Wins an Appeal

When parents request an impartial hearing, they are entitled to reasonable attorneys' fees if they ultimately prevail at the hearing, on review, in court, or through settlement. The fees are based on the prevailing rates in the community. The parents' fees may be reduced if they reject an offer of settlement made by the school, in writing, and received at least 10 days before the hearing, if the relief the parents obtain is not more favorable than the school's offer of settlement.<sup>58</sup>

Additionally, with a request for an impartial hearing, there must be a statement listing the student's name, address and school attended, as well as a description of the problem, giving rise to the hearing request and a proposed resolution of the problem to the extent known and available.<sup>59</sup> If this statement was not submitted, attorneys' fees can be limited.<sup>60</sup>

# III. The IDEA's Transition Planning Requirements

## A. Introduction

As noted above, schools must begin planning for a student's transition to the adult world beginning at age 14, when curricular options within the school are considered. No later than age 16, a full-blown transition services plan must be included in the IEP.

Transition planning was not part of the IDEA when it was first enacted. It was not added until 1990. However, the legislative history adding these transition planning requirements specifically noted that they "do not constitute new provisions of law. Rather, these inclusions provide a clarification and focus to already existing requirements of law dating back to the enactment of P.L. 94-142."<sup>61</sup> Nevertheless, there was strong sentiment that students were not being adequately prepared for the adult world. The legislative history cited statistics that of the 250,000 students 16 years or older who exit the educational system, less than one half graduate with a high school diploma and nearly 60,000 drop out.<sup>62</sup>

<sup>56</sup> 20 U.S.C. § 1415(e).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* § 1415(i)(3).

<sup>59</sup> *Id.* § 1415(b)(7).

<sup>60</sup> *Id.* § 1415(i)(3)(F)(iv).

<sup>61</sup> H.R. No. 101-544 at 11, U.S. Code Cong. & Admin. News 1990, p. 1733.

<sup>62</sup> *Id.* at 1731.

Noting that students who exit the special education system without a diploma meet with varying degrees of success, the legislative history cautions that there will be those who:

will exit our nation's schools into nothing. Years of special education will be wasted while these individuals languish at home, their ability to become independent and self-sufficient (therefore making a positive contribution to society) placed at significant risk.<sup>63</sup>

Accordingly, transition planning requires that schools develop a long-range plan for students to prepare them for post-school life, begin to make connections with adult service providers while students are still in school, and look to others, such as the VR system, to provide services. Despite adding these transition requirements in 1990, statistics for the 1996 through 1998 school years indicate that only about 27% of the students 14 years or older who exit school each year have a diploma, and that about one third of these students either dropped out of school or moved and were not known to continue in school.<sup>64</sup>

## B. A Case Scenario

To help understand the principles discussed in this article, a hypothetical case study, borrowed from Cornell University's Participant Manual, "The Right Start: Working Together with Public Schools," (1998)<sup>65</sup> (Participant Manual) will be used.

### *Case Study: Sam*

*Sam received special education services from age three onward. As a high school student with a developmental disability, he was in a pre-vocational "shop" and worked as a dishwasher in the high school cafeteria for one hour of each school day. When asked what sort of job he would like to have as an adult, he responded, "I like working with computers. I'd like a job where I work with computers."*

*One year prior to aging out of school, he was referred by his special education teacher to the state VR agency for an assessment and employment services. The VR counselor contracted with a local rehabilitation agency for assessment. Sam spent one month out of his last year in school traveling to a sheltered workshop, where he sampled tasks in food service, light manufacturing and janitorial areas for a \$5.00 per week stipend.*

*The results of that assessment indicated that Sam would be ready for employment after six months of "personal adjustment" training, followed by six months of "work adjustment" training. Sam went back to school to complete his academic course work, and left school at age 21 without a high school diploma.*

*In July, after he had left school, Sam began his 12 months of training to be a dish washer, funded by the state VR agency. He increased his productivity from 30 percent to 55 percent of competitive norms. Because the local threshold for entry into supported employment (community job*

<sup>63</sup> *Id.*

<sup>64</sup> "Transition and Post-School Outcomes for Youths with Disabilities: Closing the Gap to Post-Secondary Education and Employment," National Council on Disability, Social Security Administration, pp. 7-8 (November 1, 2000), available at [www.ncd.gov/newsroom/publications/oopublications/transition\\_11-1-00.html](http://www.ncd.gov/newsroom/publications/oopublications/transition_11-1-00.html).

<sup>65</sup> This case example is reproduced with permission and has been slightly modified.

placement and job coaching) services was 65 percent productivity, it was decided that Sam would be placed on a waiting list for the sheltered workshop. At that time, the waiting list for the sheltered workshop was estimated to be three years long.<sup>66</sup>

Sam began receiving SSI at the age of 18 because of the nature of his disability and because his parents' income was no longer counted as available (or deemed) to him. Since he is living in a state where Medicaid is automatic for SSI recipients, he also became eligible for Medicaid at the same time.

After he left school, Sam was provided with Medicaid-funded Home and Community Based Waiver services that included weekly outings to practice shopping skills and to go bowling. Through this waiver program, Medicaid also paid for a services coordinator who managed Sam's referral paperwork, kept track of Sam's place on various waiting lists, and spent 30 minutes of time per month visiting with Sam.

Sam's parents are very concerned with Sam's long term support and are equally concerned with the potential loss of SSI and Medicaid if he begins to work. Therefore, they are very hesitant to have Sam work in any setting other than a sheltered workshop, as they have been assured that his earnings will never be high enough to disqualify him for SSI and Medicaid.<sup>67</sup>

**Questions:**

- What did the school do to help Sam become employable?
- What did community agencies do to help Sam?
- How many people were involved in Sam's transition?
- What roles were missing?
- What actions could have been added to improve Sam's outcomes?
- What actions could replace actions to improve Sam's outcomes?

The specific transition planning requirements under the IDEA will now be reviewed in detail, using the facts from the hypothetical to provide concrete examples. The article will conclude with an analysis of how the IDEA and VR laws are intended to work together to ensure the smooth transition of students with disabilities from school to post-school activities. Again, the facts of Sam's case will be used to emphasize the importance of these principles.

**C. Transition Services**

Transition services are defined in the IDEA as a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities. The areas of adult living to be considered include preparation for postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community participation.

<sup>66</sup> Note: This case scenario raises independent questions, under the Americans with Disabilities Act, which are beyond the scope of this article, concerning the appropriateness of a supported employment program having a strict 65 percent cut-off rule for entry into the program.

<sup>67</sup> Also important, but beyond the scope of this article, are the many SSI and SSDI issues faced by transitioning students who are beneficiaries or soon to be applicants for benefits. These include the impact of work on benefits, continuing disability reviews, and age 18 redeterminations for SSI recipients.

Services are to be based on the individual student's needs, taking into account the student's preferences and interests.<sup>68</sup> Given this requirement at the outset, how did Sam, who expressed an interest in computers, end up in a training program to become a dishwasher? The importance of considering the students preferences when planning transition services cannot be underestimated.

A 1998 study looked at the relationship between self-determined behavior and positive adult outcomes. It found that 80 percent of the students contacted one year after graduation who were rated highly self-determined were "working for pay, compared to 43 percent of the students who were rated low." Of those working, the "students who were rated as highly self-determined averaged \$4.26 per hour, while those in the low group averaged \$1.93 per hour."<sup>69</sup>

While one may be tempted to wonder how someone with a disability such as Sam's could be involved in a career such as computing, this should not preclude an individualized inquiry, as required by the statute. Might there not be some aspect of the computer field where Sam could be successful? He certainly has not achieved a high degree of success as a dishwasher. And, wouldn't Sam's interests be the best place to start when preparing his transition plan?

The specific services to be offered in a transition plan include: (1) instruction, (2) related services, (3) community experiences, (4) development of employment and other post-school adult living objectives, and (5) if appropriate, acquisition of daily living skills and a functional vocational evaluation.<sup>70</sup> The list of activities is not intended to be exhaustive.<sup>71</sup> One court noted that specially designed instruction in driver's education, self-advocacy, and independent living skills such as cooking and cleaning were appropriate transition services for a student with an orthopedic impairment who wanted to attend college.<sup>72</sup>

Here, Sam began receiving Medicaid waiver services, including trips to practice shopping skills and to go bowling, after he exited school. There is no indication that he had these experiences while still a student, even though the transition guidelines specifically include community experiences and, if appropriate, acquisition of daily living skills.

While the law does not specifically mention financial planning, as noted above, the comments to the new regulations indicate that the enumerated services are not intended to be exhaustive. Moreover, would not financial planning be a critical part of adult life? Therefore, these services should have been considered when developing Sam's transition plan, especially given the concerns expressed by his parents about how the services Sam would require as an adult would be funded.

The 1990 amendments to the IDEA, which incorporated transition services, added "social work services" to the definition of related services.<sup>73</sup> The stated reason for this addition was to encourage educational agencies "to utilize social work services where needed," and to "base the IEP recommendation on the individual student's need for social work

<sup>68</sup> 20 U.S.C. § 1401(30); 34 C.F.R. § 300.29(a).

<sup>69</sup> Participant Manual, p. 12.

<sup>70</sup> 20 U.S.C. § 1401(30); 34 C.F.R. § 300.29(a).

<sup>71</sup> See, comments to the 1999 special education regulations at 64 Fed. Reg. 12553.

<sup>72</sup> *Yankton School Dist. v. Schramm*, 93 F.3d 1369, 1374 (8<sup>th</sup> Cir. 1996).

<sup>73</sup> 20 U.S.C. § 1401(22).

services, rather than on the perceived availability of such services.”<sup>74</sup> The legislative history noted the role social work services could play in preparing students and their families, including helping to “develop linkages to other community supports, and providing counseling, assessment, and case management services.”<sup>75</sup>

Although Sam did begin receiving case management services after he left the educational system, there is no indication that he received these services while still in school. Had he begun to receive these services while still a student, perhaps there would have been an earlier and smoother linkage to adult service providers, and he would not now be on a three-year waiting list for services. Additionally, his need for case management services may have been diminished.

The 1990 amendments to the IDEA also added rehabilitation counseling services to the definition of related services.<sup>76</sup> Rehabilitation counseling services are to be provided by qualified personnel in individual or group sessions. They are to focus specifically on career development, employment preparation, and achieving independence and integration in the workplace and community. They include VR services provided to students with disabilities by state VR agencies funded under the Rehabilitation Act.<sup>77</sup>

The legislative history to the IDEA again emphasizes the critical importance of rehabilitation counseling in the transition process:

School rehabilitation counseling is an important component of transition services because none of the other professionals involved in special education have the clear responsibility for transition planning and preparation. Furthermore, the rehabilitation counseling discipline embodies the wide range of knowledge needed for successful school to work transition, i.e., vocational implications of disability, career development, career counseling for individuals with disabilities, job placement, and job modification. Therefore, rehabilitation counselors are professionally prepared to provide the appropriate counseling services as well as to coordinate the services of the special education disciplines, adult services providers, and postsecondary education agencies to ensure effective, planned transition services for students with disabilities.<sup>78</sup>

The legislative history also notes that not all students with disabilities may be eligible for rehabilitation counseling services from the VR system and that rehabilitation counselors may be employed by school districts. Moreover, the addition of rehabilitation counseling to the definition of related services does not “relieve state [VR] agencies or special education programs of their responsibilities of cooperative transition planning and programming.”<sup>79</sup>

For Sam, the effect of the failure to provide rehabilitation counseling early in his transition years is quite apparent. There is no indication that he ever received any sort of vocational evaluation of his interests and abilities prior to being placed in his dishwashing program while a student. Nor is there any indication of any attempt to provide career counseling

<sup>74</sup> H.R. Rep. No. 101-544 at 7, U.S. Code Cong. & Admin. News 1990, p. 1729.

<sup>75</sup> *Id.*

<sup>76</sup> 20 U.S.C. § 1401(22).

<sup>77</sup> 34 C.F.R. § 300.24(b)(11).

<sup>78</sup> H.R. Rep. No. 101-54 at 7-8, U.S. Code Cong. & Admin. News 1990, 1729-30.

<sup>79</sup> *Id.* (emphasis added).

concerning his stated interest in a career in computing. Assuming his desired goal within the computing field may have been unrealistic, this counseling could have identified a goal within this field that would have been appropriate, or could have helped Sam develop another viable career goal in which he was interested.

#### D. Developing a Transition Services IEP

If an IEP meeting is to consider transition services for a student, the school must invite the student and a representative of any other agency that is likely to be responsible for providing or paying for transition services. If the student does not attend, the school must take other steps to ensure that the student's preferences and interests are considered. If an invited representative does not attend, the school must take other steps to obtain the participation of that agency in the planning of any transition services.<sup>80</sup> Here, again, we have no indication of whether Sam was involved in developing his transition plan. Furthermore, since he did not start receiving services from community agencies until after he left school, it is highly unlikely that any of these agencies were involved in the planning process.

As noted above, beginning at least by age 14, the IEP must include the transition service needs related to the child's course of study under each of the applicable sections of the IEP, such as "participation in advanced-placement courses or a vocational education program."<sup>81</sup> Sam did begin a pre-vocational "shop" program while a high school student and also worked as a dishwasher in the cafeteria for one hour per day. Although these are examples of the types of curricular options to be considered in transition planning, there is no indication that the shop program and the dishwashing experience were interrelated.

Additionally, even with the training in high school and for a year after leaving school, Sam was still not able to perform at a level sufficient for entry into a supported employment program. It is precisely for students like Sam that schools must consider the possibility of providing services before age 14. The legislative history to the IDEA indicates that transition services may be considered for some students even before age 14, especially where, because of the nature of their disabilities, they may need more "time to develop the essential skills which will be critical for them throughout their lives."<sup>82</sup>

The legislative history refers to another group of students for whom transition services may need to be provided before age 14: those at risk of dropping out.<sup>83</sup> For this group of students, the school district's curriculum should be analyzed to "help reduce the number of students with disabilities who drop out."<sup>84</sup> The IEP Team should "work with each student with a disability and the student's family to select courses of study that will be meaningful to the student's future and motivate the student to complete his or her education."<sup>85</sup>

Beginning at 16, or younger if appropriate, actual transition services should begin. The IEP must list all needed services under each area of transition, including responsibilities of other agencies to provide services and any linkages to be developed with other agencies.<sup>86</sup> The IDEA's legislative history underscores two key principles behind these requirements. First "the preparation of students with disabilities for movement from school to

<sup>80</sup> 34 C.F.R. § 300.344(b).

<sup>81</sup> 20 U.S.C. § 1414(d)(1)(A)(vii)(I).

<sup>82</sup> H.R. Rep. No. 101-544 at 10, U.S. Code Cong. & Admin. News 1990, p. 1732-33.

<sup>83</sup> *Id.*

<sup>84</sup> 34 C.F.R. Part 300, App. A, Quest. 11.

<sup>85</sup> *Id.* (emphasis added).

<sup>86</sup> 20 U.S.C. § 1414(d)(1)(A)(vii)(II); 34 C.F.R. § 300.347(b).



post-school environments [is] not ... the sole responsibility of public education.<sup>87</sup> On the one hand, “schools are not expected to become job placement centers.” On the other hand, “there are many employment and employment-related activities which are appropriately provided by and funded through the” school districts.<sup>88</sup> The specific ways in which the special education and VR systems are to interact with each other will be discussed below.

Second, schools will need to become familiar with the services available to students with disabilities in their communities and “make use of this information in the transition planning for individual students.”<sup>89</sup> The result:

[S]chools can facilitate linkage with agencies when needed by students, can ascertain requirements for access to, and participation in, the opportunities offered by these agencies, and thus can effectively communicate this information to students and their families, and identify ways in which they can prepare students with disabilities to take advantage of these opportunities.<sup>90</sup>

Recall that Sam ended up on a three-year waiting list for services. Had linkages been made while Sam was still a student, this could have been avoided. Additionally, recall that Sam’s parents were very concerned about Sam losing SSI and Medicaid. As a result, they were hesitant for Sam to be employed in any setting other than a sheltered workshop. Indeed, Sam’s parents are not alone. Fear of loss of benefits creates a significant barrier to people with disabilities who contemplate working. However, these concerns were based on false, or at least misleading, information. The comments referred to above make it clear that the school district staff would not necessarily need to become experts in the work incentives available for SSI recipients. However, they should become familiar with community resources which could provide this information, and to whom they could refer the family. It is highly unlikely that many school districts will be aware of who could provide this information. This would, therefore, provide an excellent opportunity for the BPA&Os, as part of their outreach efforts. For example, a BPA&O could determine who the transition coordinators of the school districts in its area are and offer to meet with them to explain the services which the BPA&O can provide. It could also provide project brochures to the transition coordinators for distribution to school age students and families or offer to provide workshops to students, families and school staff.

As with other parts of the IEP, the transition planning requirements are much more than mere technicalities. The court in the *Scott B.* case, discussed above, also found that a school district, which only provided for the vocational needs of the student, failed to meet its transition obligations to him. It did not develop a plan to help the student “survive an adult life.” In other words, the plan was not functional. The court noted the school: (1) did not identify any goals for the student for after he left school; (2) did not perform any transition evaluations, other than a vocational evaluation; (3) did not provide “the full panoply of services that transition planning envisions” to prepare him for life outside of school in such areas as personal needs, getting around the community and recreation; and (4) failed

<sup>87</sup> H.R. Rep. No. 101-544 at 12, U.S. Code Cong. & Admin. News 1990, p. 1734.

<sup>88</sup> *Id.* at 11, p. 1733.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*



to meet his individual, unique needs and instead placed him in an existing generic program with minor adaptations.<sup>91</sup>

It appears Sam's school district made some of the same errors as the district in the *Scott B.* case. Sam's district did not provide linkages to community service agencies while he was still in school. It also appears to have placed Sam in a pre-existing, generic, shop and dishwashing training program without considering his unique needs and interests.

## IV. Special Education and Vocational Rehabilitation Services How do the Two Systems Work Together?

As noted above, the VR system also has a role to play in preparing students for the world of work. In fact, VR agencies must now be actively involved, in collaboration with school officials, to plan for and provide services to students with disabilities during their transition years. However, in our experience, all too many state VR agencies are still unwilling to get involved until very late in a student's transition to post-school activities. What is the VR agency's responsibility while students are still in school?

### A. Obligations Under the IDEA

It is clear under the IDEA, that VR agencies are intended to be involved both in the planning process with schools and in the actual provision of services. The comments to the special education regulations note that "because many students receiving services under IDEA will also receive services under the Rehabilitation Act, it is important, in planning for their future, to consider the impact of both statutes."<sup>92</sup>

State VR agencies are specifically referred to in the IDEA regulations. As noted above, rehabilitation counseling includes services provided by the VR agency.<sup>93</sup> The definition of assistive technology (AT) services includes coordinating other services with AT devices "such as those associated with existing education and rehabilitation plans and programs."<sup>94</sup> The special education regulations also note that nothing in the transition services requirements relieves any participating agency, "including a State [VR] agency," of the responsibility to provide or pay for any transition service that the agency would otherwise provide.<sup>95</sup> A "participating agency" means a state or local agency, other than the school, that is financially and legally responsible for providing transition services to the student.<sup>96</sup> If a participating agency fails to provide agreed-upon transition services contained in the IEP, the school must initiate a meeting as soon as possible to identify alternative strategies to meet the transition objectives and, if necessary, revise the IEP.<sup>97</sup>

IDEA '97 strengthened the obligations of other public agencies to provide services to students while they are still in school. All states must now have interagency agreements to ensure that all public agencies that are responsible for providing services, which are also considered special education services, fulfill their responsibilities. Agencies meeting this definition would include both Medicaid and the state VR agency. The financial responsibility

<sup>91</sup> *East Penn School District v. Scott B.*, 29 Individuals with Disabilities Educ. L. Rep. (LRP Publications) 1058 (ED PA. 1999).

<sup>92</sup> 34 C.F.R. Part 300, App. A, Sect. III.

<sup>93</sup> *Id.* § 300.24(b)(11).

<sup>94</sup> 20 U.S.C. § 1401(2)(D)(emphasis added).

<sup>95</sup> 34 C.F.R. § 300.348(b).

<sup>96</sup> *Id.* § 300.340(b).

<sup>97</sup> *Id.* § 300.348(a).

of these public agencies must precede that of the school. If an agency does not fulfill its obligation, the school must provide the needed services, but has the right to seek reimbursement from the public agency. The agreement must also specify how the various agencies will cooperate to ensure the timely and appropriate delivery of services to the students.<sup>98</sup>

## B. Obligations Under the VR Laws

Title I of the federal Rehabilitation Act, which governs State VR agencies, contemplates that VR agencies will play an active role in special education transition planning.<sup>99</sup> Title I was amended in 1998 and final regulations implementing the changes were published on January 17, 2001. The comments to the new regulations note that the 1998 law requires state VR agencies to “increase their participation in transition planning and related activities.”<sup>100</sup> Accordingly, the state VR Plan must include policies for coordination between the VR agency and education officials to facilitate the transition from the special education system to the VR system, including development of a formal interagency agreement. The agreement must include: (1) provisions for consultation and assistance to, and planning with, the educational agencies in preparing students for transition and in developing the transition plan in the IEP; (2) the relative roles and financial responsibilities of the special education and VR systems to provide services; and (3) provisions for outreach to and identification of students with disabilities who need transition services.<sup>101</sup>

The regulations make it clear that state VR agencies are to be actively involved in the transition planning process with the school districts, including: (1) outreach to, and identification of, students with disabilities who may need transition services, as early as possible during the process; (2) consultation and technical assistance to assist school personnel in transition planning; and (3) involvement in transition planning with school personnel that facilitates development of the special education IEP.<sup>102</sup> In discussing the importance of the early involvement of the VR system in the transition planning process, the comments to the regulations stress that the VR agency should “participate actively throughout the transition planning process, not just when the student is nearing graduation.”<sup>103</sup>

Recall that Sam was not referred to the VR agency until his last year in school and that, as a result of the VR assessment, he was identified for job training as a dishwasher. While this matched the program he received as a student, it did not match his stated interest in the computer field. Had the VR agency been involved earlier in the transition planning process, perhaps the VR staff could have assisted the school and family in locating a job which met his stated employment objective and his abilities. If not, they could have assisted in identifying an employment objective and training program that matched his stated interests and abilities as closely as possible.

The VR system is also expected to provide services to at least some students with disabilities while they are still in school. The legislative history of the 1998 amendments to Title I emphasizes that, subject to the state VR Plan, the VR agency is required to provide services to students to facilitate achievement of the employment outcome as spelled out in

<sup>98</sup> 20 U.S.C. § 1412(a)(12).  
<sup>99</sup> For a fuller discussion, see “Vocational Rehabilitation Services Available to Prepare Individuals With Disabilities For Work,” another article published in this series.

<sup>100</sup> 66 Fed. Reg. 4424 (emphasis added).

<sup>101</sup> 20 U.S.C. § 721(a)(11)(D).

<sup>102</sup> 34 C.F.R. § 361.22(b).

<sup>103</sup> 66 Fed. Reg. 4424.

the individualized plan for employment (IPE).<sup>104</sup> Transition services are specifically listed in the VR regulations as an available VR service.<sup>105</sup>

Moreover, as noted above, one of the obligations of the VR system is to provide outreach to students with disabilities. As part of the mandated outreach, the VR agency must inform these students of the purpose of the VR program, the application procedures, the eligibility requirements, and the potential scope of services that may be available ... as early as possible during the transition planning process.

The stated reason for this requirement is “to enable students with disabilities to make an informed choice on whether to apply for VR services while still in school.”<sup>106</sup> In other words, it is the student’s, and family’s, choice about whether to apply for VR services while still in school.

Of course, when transition services are provided by the state VR agency, as with any other VR service, they must be designed to “promote or facilitate the achievement of the employment outcome identified in the student’s [IPE].”<sup>107</sup> As with any other person with a disability who is receiving services from the VR system, VR transition services will only be provided to “students who have been determined eligible under the VR program and who have an approved IPE.”<sup>108</sup> What services the VR agency will provide to students with disabilities and the circumstances under which they will be provided are to be consistent with the mandated state interagency agreement between the state VR and special education systems.<sup>109</sup> “However, State [VR] agencies should not interpret the ‘interagency agreement’ provisions as shifting the obligation for paying for specific transition services normally provided by those agencies to local school districts. State [VR] agencies still have that responsibility.”<sup>110</sup> Additionally, “the IPE for a student with a disability who is receiving special education services must be coordinated with the IEP for the individual in terms of the goals, objectives, and services identified in the IEP.”<sup>111</sup>

How will all of this play out for Sam? First, an appropriate employment objective must be identified for him as part of the special education transition planning. Then, once this is done, potential locations to receive his training must be identified. Will it be a school program or one operated by a community agency? Will he need additional support services to make his experience a success? Once the location and types of services are identified, the next question is: who will be responsible for paying for what services?

In answering this question, several factors must be considered. Assuming the student is eligible for VR services, the VR laws make it clear that the student and family have the right to decide whether to apply for VR services while still in school. Second, since both the IDEA and VR laws require these systems to develop a state interagency plan, this must be considered. Another factor to consider is whether the identified service provider is one with which the school district can enter into a contract. If not, perhaps the VR system will be responsible.

<sup>104</sup>Congressional Record—House, H6693, July 29, 1998.

<sup>105</sup>34 C.F.R. § 361.48(r).

<sup>106</sup>66 Fed. Reg. 4424.

<sup>107</sup>34 C.F.R. § 361.5(b)(55).

<sup>108</sup>66 Fed. Reg. 4424.

<sup>109</sup>34 C.F.R. § 361.45(d)(8)(ii).

<sup>110</sup>Congressional Record—House, H6693, July 29, 1998.

<sup>111</sup>34 C.F.R. § 361.46(d).

Finally, for those students who have not received VR services while still in school, the VR regulations require the VR system to determine eligibility and develop an IPE, for students eligible for VR services, as soon as possible during transition planning but, at the latest, by the time the student leaves the public school setting.<sup>112</sup> The comments to the VR regulations explain, again, how critical this is:

Requiring the IPE to be in place before the student exits school is essential toward ensuring a smooth transition process, one in which students do not suffer unnecessary delays in services and can continue the progress toward employment that they began making while in school.<sup>113</sup>

For Sam, although there was no delay in receiving his initial VR services, once he completed his first year of VR services, he was placed on a three-year waiting list for any additional services. Given the severity of his disability and the amount of training he apparently needed to be job ready, either he should have begun to receive VR services earlier in the process, or the follow-up he might need after his first year of preparation should have been anticipated.

## V. Conclusion

The availability of special education transition services is a critical piece in preparing students with disabilities for work as young adults. The IDEA requires that transition services be “outcome oriented” and take into consideration the student’s choice of a career goal. The IDEA also envisions linkages with appropriate community agencies. Likewise, the state VR agency is a critical player in the preparation of students for the world of work. The VR agency should be involved as soon as possible in the special education transition process, and, ideally, be a joint participant with the school district in developing a student’s transition plan two or more years before the student leaves the public school program.

The BPA&Os are now one of the agencies that school districts will need to become aware of as a potential referral source. They can be a key resource to transition-aged SSDI and SSI beneficiaries, as they can provide beneficiaries with individual benefits assessments. Where the system breaks down, BPA&Os can facilitate referrals to advocacy agencies for special education issues or to the Client Assistance Program for VR issues. The PABSS projects can likewise refer beneficiaries to other advocacy agencies or, in some cases, represent these beneficiaries directly when the issue directly relates to overcoming a barrier to work.

<sup>112</sup>*Id.* § 361.22(a)(2).

<sup>113</sup>66 Fed. Reg. 4424 (emphasis added).

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