

## **Transition from Special Education to Adult Life**

### **i. Introduction**

Schools must begin planning for a student's transition to the adult world beginning no later than the year the student will turn 16. Transition planning was not part of the IDEA when it was first enacted. It was not added until 1990. However, the legislative history adding the 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>1</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>2</sup> 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>3</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>4</sup>

### **ii. A Case Scenario**

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<sup>1</sup>H.R. No. 101-544 at 11, U.S. Code Cong. & Admin. News 1990, p. 1733.

<sup>2</sup>*Id.* at 1731.

<sup>3</sup>*Id.*

<sup>4</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).

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>5</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, "computer."*

*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, funded by the state VR agency, as a dishwasher. He increased his productivity from 30 percent to 55 percent of competitive norms. Because the local threshold for entry into supported employment (community job 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>6</sup>*

*Sam began receiving SSI at the age of 18 because of the nature*

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<sup>5</sup>This case example is reproduced with permission and has been slightly modified.

<sup>6</sup>Note: This case scenario raises independent questions, which are beyond the scope of this manual, concerning the appropriateness of a supported employment program having a strict 65 percent cut-off rule for entry into the program under the Americans with Disabilities Act.

*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.*

*Because Sam received Medicaid, he was provided with Medicaid Home and Community Based Waiver services that included weekly outings to practice shopping skills and to go bowling. 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>7</sup>*

*Questions:*

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

### **iii. Transition Services**

Transition services are defined in the IDEA as a coordinated set of activities for a student, designed within a results-oriented process,

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<sup>7</sup>Also important, but beyond the scope of this manual, 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.

that facilitates movement from school to post-school activities. The areas of adult living to be considered include preparation for postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community participation.<sup>8</sup>

Services are to be based on the individual student's needs, taking into account the *student's* preferences and interests.<sup>9</sup> Right at the outset, given this requirement, 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>10</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>11</sup> The list of activities is not intended to be exhaustive.<sup>12</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

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<sup>8</sup>20 U.S.C. § 1401(34); 34 C.F.R. § 300.43(a).

<sup>9</sup>*Id.* (Emphasis added).

<sup>10</sup>Participant Manual, p. 12.

<sup>11</sup>20 U.S.C. § 1401(34); 34 C.F.R. § 300.43(a).

<sup>12</sup>See, comments to the 1999 special education regulations at 64 Fed.Reg. 12553.

orthopedic impairment who wanted to attend college.<sup>13</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>14</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 services, rather than on the perceived availability of such services." 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>15</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 began 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>16</sup> Rehabilitation counseling services are to be provided by qualified personnel in individual or group sessions. They are to focus specifically on career development,

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<sup>13</sup>*Yankton School Dist. v. Schramm*, 93 F.3d 1369,1374 (8<sup>th</sup> Cir. 1996).

<sup>14</sup>20 U.S.C. § 1401(26).

<sup>15</sup>H.R. Rep. No. 101-544 at 7, U.S. Code Cong. & Admin. News 1990, p. 1729.

<sup>16</sup>20 U.S.C. § 1401(26).

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>17</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>18</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>19</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 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.

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<sup>17</sup>34 C.F.R. § 300.34(c)(12).

<sup>18</sup>H.R. Rep. No. 101-54 at 7-8, U.S. Code Cong. & Admin. News 1990, 1729-30.

<sup>19</sup>*Id.* (emphasis added).

#### iv. 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.<sup>20</sup> If the student does not attend, the school must take other steps to ensure that the student's preferences and interests are considered.<sup>21</sup> 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>22</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.

Beginning at least by age 16, the IEP must include "appropriate measurable goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills. It must also include the transition services needed related to reach those goals, including courses of study."<sup>23</sup> The comments to the regulations indicate that courses of study may include vocational education and advanced placement classes.<sup>24</sup> Additionally, OSEP has indicated that if a State considers postsecondary (college) course to be "secondary education," then those courses may be considered transition services and paid for with IDEA funds.<sup>25</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 after 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 16. The legislative history to the IDEA indicates that transition services

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<sup>20</sup>34 C.F.R. § 300.321(b).

<sup>21</sup>*Id.* § 300.321(b)(2).

<sup>22</sup>*Id.* § 300.324(c)(1).

<sup>23</sup>*Id.* § 300.320(b).

<sup>24</sup>71 Fed.Reg. 46668.

<sup>25</sup>*Letter to Dude*, 113 LRP 37277(OSEP Sept. 13, 2013).

may be considered for some students even before age 16, 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>26</sup>

The legislative history refers to another group of students for whom transition services may need to be provided before age 16: those at risk of dropping out.<sup>27</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.” 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>28</sup>

Additionally, as noted above, any other agencies that may be responsible for providing or paying for transition services must be invited to the IEP Team meeting.<sup>29</sup> The IDEA’s legislative history underscores two key principles behind this requirement. First, “the preparation of students with disabilities for movement from school to post-school environments [is] not ... the sole responsibility of public education.”<sup>30</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>31</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>32</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

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<sup>26</sup>H.R. Rep. No. 101-544 at 10, U.S. Code Cong. & Admin. News 1990, p. 1732-33.

<sup>27</sup>*Id.*

<sup>28</sup>Former 34 C.F.R. Part 300, App. A, Quest. 11 (emphasis added) 64 Fed. Reg. 12475.

<sup>29</sup>34 C.F.R. § 300.321(b)(3).

<sup>30</sup>H.R. Rep. No. 101-544 at 12, U.S. Code Cong. & Admin. News 1990, p. 1734.

<sup>31</sup>*Id.* at 11, p. 1733.

<sup>32</sup>*Id.*

students with disabilities to take advantage of these opportunities.<sup>33</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.

As with other parts of the IEP, the transition planning requirements are much more than mere technicalities. The court in the *Scott B.* case, 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 to meet his individual, unique needs and instead placed him in an existing generic program with minor adaptations.<sup>34</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 looks like it placed Sam in a pre-existing, generic, shop and dishwashing training program without considering his unique needs and interests.

Likewise, the court in *Dracut School Committee v. Bureau of Special Education Appeals of the Massachusetts Dept. Of Elementary and Secondary*

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<sup>33</sup>*Id.*

<sup>34</sup>*East Penn School District v. Scott B.*, 1999 WL 178363, 29 IDELR 1058 (E.D. Pa. 1999), *aff'd* 213 F.3d 628 (3<sup>rd</sup> Cir. 2000).

*Education*,<sup>35</sup> held that the school district did not provide appropriate transition services. First, it held the transition components of the IEP were procedurally defective. Evaluations were not conducted until two years after the student was eligible for transition services. The court also held that the transition provisions in the IEP were substantively defective. The district provided no meaningful instruction in the area of pragmatic language skills, a central component of the student's ability to transition. The district offered no community based employment experiences, and it did not provide any services to address the student's independent living skills.

Additionally, a federal district court in Alabama held that one a student's transition services plan violated the IDEA.<sup>36</sup> The court found that the school district had not conducted any transition assessments, and did not develop an individualized transition IEP. Instead, the school district used stock language that was not individualized to meet the student's unique needs. The court also noted that it was disingenuous for the school district to argue that the student was too disabled to benefit from transition services, since the record indicated the student "barely qualified" for special education services the year before.

In another case, however, the Seventh Circuit held that the failure to have a transition plan was a procedural violation that did not automatically amount to a denial of the IDEA's free and appropriate public education requirement.<sup>37</sup> In the Seventh Circuit case, the child could not benefit from an elaborate transition plan and the services the child was receiving in the IEP were all that she needed to receive a free and appropriate public education.

Finally, in *Gibson v. Forest Hills School Dist. Bd. of Educ.*,<sup>38</sup> the court held that the transition IEP was procedurally defective and, therefore, denied student FAPE. The school district did not invite the student to transition IEP meetings and did not take other steps to consider her preferences and interests. Additionally, the school district did not conduct adequate assessments to determine her transition needs, particularly her employment needs. The court ordered compensatory services for student, post age 21.

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<sup>35</sup>737 F.Supp.2d 35 (D.Mass. 2010).

<sup>36</sup>*Jefferson County Board of Education v. Lolita S.*, 977 F.Supp.2d 1091 (N.D. Ala. 2013).

<sup>37</sup>*Board of Education of Township High School v. Ross*, 486 F.3d 267 (7th Cir. 2007).

<sup>38</sup>No. 1:11-cv-329, 2014 WL 3530708 (S.D. Ohio July 15, 2014).