

Policy Update

Winter 1993

IDEA: Its Impact on Transition Regulations

In October 1990, Congress passed and former President Bush signed into law the Individuals with Disabilities Education Act (IDEA - PL. 101-476). IDEA serves to amend the Education of the Handicapped Act Amendments. Final regulations for IDEA were published in the September 29, 1992, Federal Register (Vol. 57, No. 189, pp. 44794-44852) and revised in the October 27, 1992 edition (Vol. 57, No. 208, 48694-48704). Several sections of the regulations pertain to the transition of students from school to adult life. Four important requirements of IDEA concern: (1) notification, (2) participation in meetings, (3) content of the IEP, and (4) agency responsibility. The purpose of this policy brief is to present the regulatory language and describe potential implications in each of these four areas.

• Notification (Section 300.345)

With regard to parent notification of the IEP meeting, the regulations state:

(2) If a purpose of a meeting is a consideration of transition services for a student, the notice must also—

- (i) Indicate this purpose;*
- (ii) Indicate that the agency will invite the student; and*
- (Hi) Identify any other agency that will be invited to send a representative.*

It is likely that this change was intended to ensure that parents are informed in advance that transition issues will be discussed at the IEP meeting, thus providing them with the opportunity to prepare for the discussion. Preparation might include thinking about future goals for their son or daughter. They may also want to invite friends, community members or others who could provide support for their child as they move into adult life. By knowing that their son or daughter will be invited, parents have an opportunity to discuss transition goals and activities with their child, and to ask school personnel to utilize strategies for maximizing the student's participation in the IEP meeting. With an understanding of the agencies to be invited, parents can request that additional or alternate agencies be included. They may also want to request information about the services and policies of invited agencies.

• Participation in Meetings (Section 300.344)

IDEA mandates that for students, beginning no later than 16 years of age (and at a younger age, if determined appropriate), one of the purposes of the annual meeting will always be the planning of transition services, since transition services are a required component of the IEP. In IEP meetings where transition will be discussed, IDEA expands participation to include:

- (1) The student; and*
- (ii) A representative of any other agency that is likely to be responsible for providing or paying for transition services.*

Student Participation

The mandate to involve students in the discussion of their future goals and plans reflects the values of self-determination, enablement, and shared responsibility. It may, however, challenge parents and professionals to change procedures and develop strategies to ensure that students are given an active and powerful voice in the planning of their future. For many students this will mean that well before the IEP meeting, both in and out of school, they must participate in activities designed to enhance their knowledge base and decision-making and communication skills. The law goes on to state:

- (2) If the student does not attend, the public agency shall take other steps to ensure that the student's preferences and interests are considered.*

It is difficult to imagine conditions under which a student would not attend her or his IEP meeting, other than personal choice. In those rare instances, steps should be taken to

The National Transition Network is a collaboration of the University of Minnesota; University of Vermont; Colorado State University; University of Arkansas; University of Illinois, Urbana-Champaign; Technical Assistance for Parent Programs; and PACER Center. Its headquarters are at the Institute on Community Integration (UAP), University of Minnesota, Pattee hall, ISO Pillsbury Dr. SE, Minneapolis, MN 55455, (612) 626-8200.

collect information from the student and informed family members, friends, and professionals, and to present that information at the meeting. In these situations, it is useful to have advocates or representatives of the student in attendance at the IEP meeting to ensure that the needs and preferences of the student are considered.

Agency Participation

The requirement to involve agencies responsible for providing or paying for services reflects the values of long-term, child-centered planning; coordination; and shared responsibility. It places responsibility on school personnel to become knowledgeable about the services and policies of community agencies. The agencies, in turn, should expand their role to include interaction with students who are still in school. These agencies might include: vocational rehabilitation, recreation, employment and training, mental health, mental retardation/developmental disabilities, social security, housing, and others relevant to the individual needs and preferences of the student. The regulations further state:

(3) If an agency invited to send a representative does not do so, the public agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

Although not specified in the law, these steps might include, forwarding a copy of the IEP to the agency (with parent and student approval), arranging for a subsequent IEP meeting to discuss transition specific issues, involving advocacy groups, maintaining contact with the agency to promote involvement, and encouraging parents and students to initiate contact and request involvement.

• The Content of the IEP (Section 300.346)

According to IDEA:

(1) The IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of transition services as defined in Section 300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.

Although the statute does not mandate transition services for all students beginning at 14 or younger, the provision of these services could have a significant positive effect on the employment and independent living outcomes for many of those students in the future, especially for students who are at risk for dropping out. With respect to the provision of transition services to students younger than age 16, the Report of the House Committee on Education and Labor on P.L. 101-476 included the following statement:

Although this language leaves the final determination of when to initiate transition services for students under age 16 to the IEP process, it nevertheless makes clear that Congress expects consideration to be given to the need for transition services for some students by age 14 or younger. The committee encourages that approach because of their concern that age 16 may be too late for many students, particularly those students at risk of dropping out of school and those with the most severe disabilities. Even for those students who stay in school until age 18, many will need more than two years of transitional services. Students with disabilities are now dropping out of school before age 16, feeling that the education system has little to offer them. Initiating services at a younger age will be critical (House Report No. 101-544, 10, (1990)).

Section 300.18 states:

(a) As used in this part, "transition services" means a coordinated set of activities for a student, designed within an outcome oriented process that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adults services, independent living, or community participation.

(b) The coordinated set of activities described in paragraph (a) of this section must:

- (1) Be based on the individual student's needs, taking into account the student's preferences and interests; and*
- (2) Include (i) instruction, (ii) community experiences, (iii) the development of employment and other post-school adult living objectives, and (iv) if appropriate, acquisition of daily living skills and functional vocational evaluation.*

At a minimum, the IEP team must now address each of the areas including instruction, community experiences, and development of employment and other post-school adult living objectives. In most cases, each of the four areas, and possibly some others, will be included in students' IEPs. However, if the IEP team determines that no services are needed within any one of the four designated areas, a statement to that effect and the basis upon which that decision was made must be included in the IEP. This requirement is designed to ensure that the IEP team and the resulting IEP addresses *all* areas that are critical to successful postschool outcomes for an individual student. Examples of successful outcomes are employment, participation in postsecondary education, meaningful community involvement, appropriate housing, and belonging to a social network.

Transition services may be special education, if they are provided as specially designed instruction, or related services, if they are required to assist a student to benefit from special education. They may be provided by the education agency, or as we will see in the next section, they may be provided by agencies outside the school. In either case, they should be written into the IEP and the responsible agency noted.

• Agency Responsibilities (Section 300.347)

Given the complexity and long term nature of transition, it is clear that neither families, schools, adult service providers, state agencies, nor post-secondary institutions can carry the entire fiscal, programmatic, or planning responsibility. As such, IDEA seeks to involve the student, family, school, and outside agencies in the planning process to increase the likelihood of smooth transitions from school to other service systems and postschool settings.

In addition to inviting representatives of outside agencies to the IEP meeting when transition is being discussed, IDEA states the IEP should contain statements of each public and participating agency's responsibilities or linkage (or both) before the student leaves the school setting. This section should also include a commitment by the participating agency to meet the financial responsibility associated with provision of services. This is most important if a state or local agency other than the school is responsible for providing or paying for needed services.

To further elaborate on the shared responsibility for transition services, Section 300.347(a)(b)(c) incorporates a statutory provision:

(a) If a participating agency fails to provide agreed upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and if necessary, revising the student's IEP.

(b) Nothing in this part relieves any participating agency, including the state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

The intent of this section is to ensure that the public agency responsible for the student's education will take necessary steps to see that each student with a disability receives needed transition services. In this case, a participating agency is defined as a state or local agency, other than the public agency responsible for the student's education, that is financially and legally responsible for providing transition services to the student (Section 300.340). While the intent seems clear, there

remain procedural and definitional questions that pertain to the nature of alternative strategies, the time limits for reconvening the IEP team, and the responsibility of the educational agency if other agencies fail to provide agreed upon services.

Alternative Strategies

Alternative strategies may be able to be identified without changing the student's IEP. In other instances, the IEP team may decide to revise the IEP, changing goals, short term objectives, timelines, or statements about agency responsibility. For example, a student graduates in May at age 19 and begins receiving postschool supported employment services specified on the IEP. The following September those services are terminated because of budget cuts. In October, the IEP team reconvenes and decides that because the former student has not reached the age of 22 and is in need of transition services as specified on the IEP, the educational agency will provide supported employment services through its existing employment program. The team also identified other agencies that can provide the necessary supported employment services and makes plans for accessing the services from the other agencies. In another scenario, a student's IEP specifies that a community residential placement is needed within the next three months. If a community residence is not accessed by that time, the team would meet again to discuss the delay and to ascertain the status of access to service. It may be that waiting lists indicate a six month wait, but the likelihood of accessing services is high. In that case, the IEP team may decide to lengthen the timeline and meet in another three months to discuss progress. If the indication is that a community residence is not a likely possibility for this student due to lack of availability, eligibility, or other reasons, the team may try to come up with other strategies to achieve the same goal. These strategies may include creative use of social security and other funds to purchase or rent housing, pooling resources of young adults with similar needs (both with and without disabilities), or eliciting the assistance of advocacy or lobbying groups.

The provisions of Section 300.347 clearly do not imply that the burden for services, programs, or financial responsibility falls solely on the educational agency when things do not turn out as planned. By giving parents and students a means to re-engage with the planning team when things go wrong, the provision seeks to prevent students "falling through the cracks" with no place to go for assistance and advocacy. Ingenuity, creativity, and a willingness to jointly seek alternative solutions are needed when initial plans or strategies fail to materialize. The strength of this provision relies on the existence of local or state interagency agreements that clearly delineate the financial and legal responsibilities of agencies involved in transition services. Without such agreements, the reconvention process may be ineffectual.

■ Time Limits for Reconvening the IEP Team

There are no specific time limits stated in the law or its regulations regarding the reconvening of the IEP team. A related response is located in the Appendix of the September 29, 1992, Federal Register (p. 44848):

Part B of the Act neither requires nor prohibits the provision of service to a student after the student has completed the State's graduation requirements. Thus, if a student is still within the eligible age range for FAPE (Free Appropriate Public Education) within the State, the State, at its discretion, could continue to provide needed transition services to the student and use the funds under this part to pay for the transition services, or contribute to the cost of those services through a shared cost arrangement with another agency—provided that all applicable requirements of this part are met.

Legal decisions and state legislation will probably soon define the time limits for reconvention, but the most literal interpretation at this point in time is that reconvention rights could continue as long as FAPE eligibility remains.

■ Conclusion

The above discussion and many of our examples in this update are based on effective practices observed in localities and states throughout the nation. These practices should not necessarily be interpreted as required by law. We encourage individual state education agencies, in collaboration with other state and local organizations and parent and consumer groups, to actively engage in discussions regarding these and other provisions of the Individuals with Disabilities Education Act (IDEA - P.L.101-476) addressing transition.

Policy Update is published by the National Transition Network (NTN). The National Transition Network is funded by Cooperative Agreement H158G20002 from the Office of Special Education and Rehabilitative Services, U.S. Department of Education. Additional copies of this publication are available through the National Transition Network, Institute on Community Integration, University of Minnesota, 6 Pattee Hall, 150 Pillsbury Drive SE, Minneapolis, MN 55455 • (612) 626-8200. Upon request, this publication will be made available in alternative formats.

Collaborators of the National Transition Network are equal opportunity employers and educators.

National Transition Network
Institute on Community Integration
University of Minnesota
Pattee Hall
150 Pillsbury Drive S.E.
Minneapolis, MN 55455

Non Profit
U.S. Postage
PAID
Minneapolis, MN
Permit No. 155

Address Correction Requested