

DSA LUNCH AND LEARN SEMINAR

“Transition to Adult Life-Practical Applications of IDEA’S Transition Requirements” November 2, 2023

Written and presented by

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I. IDEA’S TRANSITION SERVICES REQUIREMENT.

A. The purpose of IDEA’S transition services requirement.

During each of IDEA’s re-authorizations, Congress’s intent was to strengthen the services due children with disabilities. In 1990, Congress did so by adding the requirement that schools provide transition services to assist children with disabilities in their transition to a post-secondary environment. See *Todd D. v. Andrews*, 933 F.2d 1576, fn. 2 (1991) (explaining history of Congress’s inclusion of transition services). In 2004, Congress strengthened IDEA’s transition requirements to improve outcomes of such students. The amendment was Congress’s reaction to the fact that children with disabilities were leaving school, with very poor outcomes in their post-secondary environments. Congress placed “added emphasis on transition services so that special education students leave the system ready to be full productive citizens, whether they go on to college or a job.” 150 Cong. Rec. S11653-01, S11656 (Nov. 19, 2004) (Conf. Rep. accompanying H.R. 1350) (Statement of Sen. Dodd).

B. The definition of transition Services is expansive. Alabama’s Administrative Code defines transition services as follows:

(24) Transition Services.

(a) Transition services means a coordinated set of activities for a child with a disability that:

1. Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

2. Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes:

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.¹

Ala. Code 290-8-9.00(24). See also, 20 U.S.C. 1400(d)(1)(A); 20 U.S.C. 1414(d)(1)(a)(i)(VIII); 34 C.F.R. 300.320(b).

C. Like other IEP goals, goals in the area of transition must be "measurable" and "based upon age-appropriate transition assessments". 34 C.F.R. 320(b)(1). Alabama breaks transition services into at least eleven separate areas. Specifically,¹ IDEA-compliant IEP transition services should contain at least three separate goals in the areas of training, education and employment. See *Questions and Answers on Secondary Transition*, 57 IDELR 231 (OSERS September 1, 2011) (explaining 34 C.F.R. 300.320(b)). The training and education areas may be combined, but employment is distinct. A district could also determine that a child needs independent living skills.

D. Transition assessments and services must be included in a student's IEP beginning at least when a student turns 16 or, younger if determined appropriate by the IEP team.

¹ Text that is italicized is taken directly from Alabama's special education Code.

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter, appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills and the transition services (including courses of study) needed to assist the child in reaching those goals.

Ala. Code 290-8-9.05(6)(h).

E. The required participants in an IEP meeting discussing transition.

(h) Secondary Transition Services Participants. In addition to the participants specified in (a) through (f) above, if a purpose of the meeting is the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals, the public agency must invite the child and, with the consent of the parents or a child who has reached the age of majority, a representative of any other agency that is likely to be responsible for providing or paying for transition services. If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.

Ala. Code 290-8-9.05(3)(h). Likewise,

For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice must indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child. In cases where transition is addressed, the notice must also indicate that the public agency will invite the student; and identify any other agency that will be invited to send a representative, but only if consent to invite other agencies is obtained from the parent and/or student (if the rights have transferred).

Ala. Code 290-8-9.05(5).

F. In Alabama, transition goals must be written in accordance with Alabama's transition standards.

Academic goals must be written to general education content standards; or Alabama Extended Standards for students with significant cognitive disabilities who are being assessed with the Alabama Alternate Assessment; or Developmental Standards for preschool children with disabilities. Transition goals must be written to Alabama's Transition Standards.

Ala. Code 290-8-9.05(6)(o).

G. Remember that the student's school district is ultimately responsible for assuring transition assessments and services.

Agency Responsibilities for Transition. (a) When a participating agency, other than the education agency, fails to provide agreed upon transition services contained in the individualized education program of a child with a disability, the education agency must, as soon as possible, reconvene the IEP Team to identify alternative strategies to meet the transition objectives and, if necessary, revise the child's IEP. The education agency's responsibility ends upon the child's receipt of an Alabama High School Diploma or by reaching age twenty-one. Refer to Ala. Admin. Code r. 290-8-9-.04(3)(b).

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

Ala. Code 290-8-9.05(12).

II. PRACTICAL APPLICATION FOR SECURING TRANSITION SERVICES.

A. Do not underestimate the amount of advocacy needed to assure comprehensive transition evaluations and services.

B. A comprehensive evaluation is critical to the development of a solid transition plan. It also likely will be necessary to insist that that a student is evaluated in areas other than employment. And, do not rely on "interest surveys" to serve as the transition assessment, as these are typically limited to a student's vocational interests.

Jefferson County Bd. of Educ. v. Lolita S., 2014 U.S. App. LEXIS 17548 (11th Cir. 2014) (UNPUBLISHED). See also Jefferson County Bd. of Educ.

v. Lolita S., 977 F. Supp. 2d 1091 (N.D. Ala. 2013)(district’s reliance on state standards, which had not been individualized to meet the student’s needs, denied him a FAPE. Here, a student read at an early elementary level, yet his IEP included a reading goal at the ninth grade level. The court found that, given the goal, the district should have offered the student a reading program to bridge the gap between the student’s present level of performance and the goal. **The court also determined that the district failed to adequately evaluate the student’s transition needs.**

C. Consider the use of <https://tinyurl.com/dsalunchandlearn> to identify goals in areas outside of the employment. See also the Transition Planning Checklist contained in Alabama’s Transition Engagement Series #1.

D. In the area of employment, avoid allowing the focus to be too narrow and unrealistic.

E. Advocate for appropriate programs which focus on developing the student’s basic functional and academic skills prior to and during the student’s participation in transition services. As appropriate, secure individualized instruction and related services which focus on language, reading literacy, math operations, behavior, adaptive behavior such as dressing, meal preparation and other independent living skills, which are often overlooked.

J.B. v. Killingly Bd. of Educ., 990 F. Supp. 57 (D. Conn. 1997). The plan did not provide for a coordinated set of activities that included instruction, community experiences and the development of employment and other post-school adult living objectives, such as the student’s need for close supervision should not have prevented these services.

Yankton School District v. Schramm, 93 F.3d 1369 (8th Cir.1999). Transition services such as driver’s education, self-advocacy, and independent living skills are not beyond IDEA’s statutory scope.

F. Try not to settle on a “one size fits all” transition class, and certainly not without additional individualized transition services which are designed to meet the student’s needs. The services should be driven by a comprehensive evaluation in all of the required domains as appropriate.

East Penn School District v. Scott B., 213 F.3d 628 (3d Cir.2000). Student’s IEP transition plan which was not based on a transition evaluation. The plan

merely placed the student into existing programs with some minor adaptations. The plan was “woefully lacking” in important details, such as how the student would access the community and how he would meet his personal needs.

G. Do not let the district’s “one size fits all” timing of transition services control. For example, “we include Voc Rehab in the 11th grade for our transition students”. Also, parents have the right to contact outside agencies directly to begin the process of securing services.

H. Assess the amount and type of transition services are included the IEP. It is possible to get additional goals, beyond what is included in the Transition Goals pages. Get creative—consider for example, supported employment.