

LEGAL UPDATES

NORTHWESTERN OHIO EDUCATIONAL RESEARCH COUNCIL

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"Evolving Graduation Issues of Special Education Students"

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I. Introduction

A. IDEA rights cease.

B. ADA/504 are "reasonable accommodation" statutes after high school graduation.

C. Examples

1. No specially designed instruction
2. No related services
3. No modified curriculum
4. No behavioral plans
5. No more "free" evaluations

II. Graduation is supposed to end legal responsibilities to student under IDEA.

A. Graduation under IDEA with a regular education diploma ceases IDEA obligations.

B. Statute, regulations, and commentary never mention impact of GED.

C. Legal decisions

1. Hearing officer rules that receipt of a regular education diploma does not necessarily prove a valid graduation. Independent Sch. Dist. No. 281, 32 IDELR 277 (SEA M.N. 1999).

2. "A school can exclude disabled children through a variety of methods, such as by ignoring them, expelling them, suspending them, or graduating them. Because graduation entails the transmission of a diploma and some measure of pomp and circumstance does not inoculate graduation from the possibility that it is simply another form of illegal exclusion. In fact, graduation is probably the most dire form of exclusion because it potentially renders a person ineligible for future education aid under the IDEA." Bell v. Education in Organized Territories, 2000 WL 1855096 (D.Me. 2000).

D. Legal Requirements for Graduation

1. Graduation is a change of placement. 34 CFR '300.122(a)(3).

2. Notice a reasonable period of time prior to graduation. 34 CFR 300.503(a)(1).

3. Ohio Model Policies and Procedures requires that PS-401 (Parent Notice) be given before graduation. The IEP can serve as prior written notice.

III. Aging out ceases IDEA eligibility. 34 CFR '300.122(a)(1).

A. State law controls age.

B. In Ohio, person under age 22.

IV. Courts do not agree on what effect graduation has upon IDEA claims.

A. If a student has graduated from high school and does not contest his graduation, the case is moot. T.S. v. Independent Sch. Dist. No. 54, 265 F.3d 1090, 35 IDELR 128(10th Cir. 2001). (Student attending college with 3.5 grade point average in first year.)

Student claimed that the District violated the IDEA because they did not give him written notice of his graduation and he was deprived of an exit meeting. The student did not claim that the lack of notice or meeting rendered the graduation invalid.

The student was deemed eligible to graduate from high school. On the last day of school, the student filed a due process request claiming that his IEP was insufficient. The District concluded that the student graduated before the request for due process was received and the request was denied.

The crux of the student's argument was that graduation constituted a change in placement under the IDEA, and the District should have given him formal notification of the impending graduation, an exit IEP meeting, and notice of his available options related to the proposed change in placement.

The court found that the case was moot because nowhere did the student contest his graduation, therefore the claims of procedural violations of the IDEA were not applicable.

B. If parents can state some claim for relief, such as compensatory education services, Courts will find that graduation has not made the case procedurally moot.

1. Brett v. Goshen Comm. Sch. Corp., 161 F.Supp.2d 930 (N.D. Ind. 2001). Twenty-four year old student attempted to prove that graduation was a "sham." Case was not moot because student was challenging graduation and seeking compensatory education services.

2. Maine Sch. Admin. Dist. No. 35 v. Mr. and Mrs. R., 176 F.Supp.2d, 15 2001 Westlaw 1621327 (D.Me. 2001). Case not procedurally moot even where graduation and 20th birthday occurred after the action was filed because parents validly asserted a claim for compensatory education. However, case is substantially moot where there were no circumstances under which compensatory education might be available where stay-put order and passage of time provided services sought by student in the first place.(Parents received no attorney fees because never got to substantive claim because received relief in the interim due to stay put.)

V. Can Compensatory Education Ever Be Services at Post-secondary Level?

A. Post-secondary relief disfavored. Court calls it "extraordinary." Chuhuran v. Walled Lake Consolidated Sch., 839 F.Supp. 465 (E.D. Mich. 1993), aff'd, 51 F.3d 271 (6th Cir. 1995).

B. Post-secondary relief authorized when school district had never identified student. Puffer v. Reynolds, 761 F.Supp. 838 (D. Mass. 1988).

C. Post-secondary relief rejected in *Gorski v. Lynchburg School Board*, 441 IDELR 415 (4th Cir. 1989) (unpublished opinion).

D. Post-secondary relief is not authorized by the IDEA according to the Office of Special Education Programs, U.S. Department of Education. Letter to Riffel, 34 IDELR 292 (OSEP 2000).

". . . Part B does not authorize a school district to provide a student with compensatory education, through the provision of instruction or services, at the post-secondary level. See 34 CFR '300.25." The type of relief that is to be awarded for compensatory education to cure the denial of FAPE during the period when the student was entitled to FAPE, must be the type of educational and related services that are part of elementary and secondary school education offered by the state.

VI. Procedural Issues

A. Failure to include regular education teacher at final IEP meeting where graduation was discussed was not a violation of IDEA since the purpose of the meeting was not revision of IEP itself. *Daugherty v. Hamilton County Schs.*, 21 F.Supp.2d 765 (E.D. Tenn. 1998).

VII. What is Graduation?

A. Is it meeting the academic requirements for receipt of diploma or meeting IEP goals and objectives?

1. Could student challenge graduation for failing to meet, for example, social/emotional goals?

B. Compensatory Education Claim Will Survive a Student's Graduation

The Office of Special Education Programs, U.S. Department of Education has given an opinion that a student's graduation does not automatically relieve a district of its responsibility to provide compensatory education-related services previously awarded to the student for a denial of FAPE. Letter to Riffel, 34 IDELR 292 (OSEP 2000).

The purposes of a compensatory education award is to remedy the failure to provide services a student should have received in high school when he or she was entitled to FAPE. Compensatory services are often appropriate as a remedy even after the period when the student is otherwise entitled to FAPE because, like FAPE, compensatory education can assist the student in the broader educational purposes of the IDEA including obtaining a job or living independently. OSEP said though that a district is not required to provide compensatory services to a graduated student once the student enters college or junior college, unless such a level of education is considered "elementary and secondary education" under state law.

C. *Daugherty v. Hamilton County Schs.*, 21 F.Supp.2d 765 (E.D. Tenn. 1998). Court says focus is on academics. Issue of transition service failure not raised on appeal. (The decision issued prior to 1999 regulations.)

D. Although IEP team had agreed that student met graduation requirements, she received additional compensatory services of transition services. *Appleton Area Sch. Dist. v. Benson*, 32 IDELR 91 (E.D. WI 2000).