



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

September 3, 2013

W. Kelly Dude
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Dear Mr. Dude:

This is in response to your letter to the Office of Special Education Programs (OSEP), written on behalf of “several school districts in the Pike’s Peak region of Colorado,” requesting clarification regarding the secondary transition requirements in Part B of the Individuals with Disabilities Education Act (IDEA or Part B). In general, your questions relate to whether services at postsecondary institutions can be provided as part of a student’s transition services identified in the student’s individualized education program (IEP) under 34 CFR §300.320(b). I apologize for the delay in responding.

Ensuring that all students, including students with disabilities, have the skills and knowledge necessary to succeed in college and the workforce will require higher standards of educational excellence. The Department is committed to ensuring that all students have the resources and supports needed for success in college and in a competitive workforce including the opportunity to enroll in educational programs that develop necessary knowledge and skills. OSEP believes that providing a high school student with a disability the opportunity to take one or more courses at a community college or other postsecondary institution prior to high school graduation can be critical in facilitating the student’s transition from secondary school to college or the workforce. This letter will address how participation in courses at a postsecondary institution can occur consistent with Part B of IDEA.

If under State law, attending classes at a postsecondary institution, whether auditing or for credit, is considered secondary school education for students in grade 12 or below and the education provided meets applicable State standards, those services can be designated as transition services on a student’s IEP and paid for with IDEA Part B funds, consistent with the student’s entitlement to a free appropriate public education (FAPE). ¹

¹ There are, however, exceptions to FAPE for certain ages in 34 CFR §300.102. Students with disabilities who have graduated from high school with a regular high school diploma are not entitled to FAPE. The IEP Team for a student who has not graduated from high school with a regular high school diploma has the full range of options available to provide FAPE, including providing appropriate transition services “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.” 34 CFR §300.43.

See the definitions of FAPE at 34 CFR §300.17 and secondary school at 34 CFR §300.36.² If a State does not consider attendance at a postsecondary institution as part of secondary school education, Part B funds may not be used to pay for the services. However, the State may elect to use State and local funds to provide or pay for services for a student with a disability that would be in addition to those special education and related services required under IDEA. In these situations, as discussed below, IDEA does not prohibit a State or school district from choosing to include those additional services in a student's IEP.

Your specific questions and OSEP's responses follow.

Question 1: Does the IDEA require that school districts include language in a transition plan indicating that a student shall have access to attend a junior college, college or university (hereafter collectively "postsecondary") upon the student's or parents' request? In a related issue, on what basis can a school district determine that such a student cannot reasonably benefit from attending post-secondary schools?

OSEP's Response: As you know, transition services must be a part of a student's IEP beginning not later than the first IEP to be in effect when the student is 16 years of age, or younger, if determined appropriate by the IEP Team. 34 CFR §300.320(b). The term *transition services* is defined by 34 CFR §300.43 as follows:

- (a) 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.

² Under 34 CFR §300.17, FAPE means special education and related services that—(a) are provide at public expense, under public supervision and direction, and without charge; (b) meet the standards of the SEA, including the requirements of this part; (c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324. Under 34 CFR §300.36, secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

- (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.

Decisions related to the specific content of postsecondary goals and transition services are the responsibility of the IEP Team, the required members of which are identified in 34 CFR §300.321(a) and (b). The parent and the student are required IEP Team members at IEP Team meetings where transition services and postsecondary goals are discussed. The IEP Team must consider the student's needs, taking into account the student's strengths, preferences and interests. 34 CFR §§300.320(b)(2) and 300.43(a)(2). The IEP Team is required by 34 CFR §300.324(a)(ii) to consider "the concerns of the parent for enhancing the education of their child;" however, the IEP Team is not required to include a particular transition service or services in a student's IEP based solely on a parent's or student's request.

The IDEA does not specify criteria for determining whether a student would or would not "reasonably benefit"³ from specific transition services. The IEP requirements in 34 CFR §300.320(b) for "appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills" should inform the IEP Team's decisions regarding "transition services (including courses of study) needed to assist the child in reaching those goals." If the IEP Team determines that services in a community, technical, or other postsecondary program are necessary to assist the secondary school student in reaching his/her postsecondary goals and receiving FAPE, and those services are considered secondary school education as discussed above, the student's IEP Team could designate those as transition services and the school district could pay for those services with IDEA Part B funds.

If attendance at postsecondary classes cannot be supported with IDEA Part B funds, as noted above, a State may elect to use State and local funds to provide or pay for those services. OSEP recognizes that school districts and students and parents may wish to use the IEP as the vehicle to document that the child is receiving services at a postsecondary institution that cannot be paid for with Part B funds as a transition service. However, there is no IDEA requirement to include additional information in a child's IEP beyond what is explicitly required in section 614 of the Act. See 34 CFR §300.320(d)(1). Thus, if a State provides or pays for transition services on college campuses with State or local funds and wishes to require that the child's IEP include those services, consistent with section 608(b) of IDEA, it must inform local educational agencies in the State and the Department in writing that this is a State-imposed requirement that is not required by Part B of the Act. See 34 CFR §300.199(a)(2).

³ OSEP interprets "reasonably benefit" to mean that the child's IEP, including transition services where appropriate, is reasonably calculated to enable the child to receive educational benefit. See Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982).

Question 2: If a special education student with a transition plan attends a postsecondary institution, either auditing or taking one or more classes for credit, is the school district obligated to provide, and pay for, transportation, tuition and/or a paraprofessional to attend classes with the student?

OSEP's Response: In general, IDEA requires that the special education and related services provided to a student under his or her IEP, including the transition services identified in the student's IEP, must be provided at public expense and at no cost to the parents. 34 CFR §§300.101 and 300.17. Whether the school district is obligated to provide, and pay for, transportation, tuition and/or a paraprofessional to attend classes with the student is a determination that must be made on an individual, case-by-case basis by the student's IEP Team.

Question 3: If a special education student with a transition plan who is attending a post-secondary institution wants to experience living in a dormitory, what obligation, if any does a school district have to provide a paraprofessional on site at the dormitory, and does a school district have an obligation to pay for the cost of the room and board?

OSEP's Response: Unless this experience is being provided to carry out a postsecondary goal included by the IEP Team on the student's IEP as part of the student's transition services and is considered secondary school education as described above, the LEA is under no obligation to provide, or pay for, either a paraprofessional or the cost of room and board.

Question 4: If school districts have any of the obligations described above, how would these obligations reasonably be imposed on rural school districts that may be located significant distances from a post-secondary institution?

OSEP's Response: Rural school districts have the same obligation as other school districts with respect to developing postsecondary goals and providing transition services for a student with a disability. Based on the clarification set out in this letter, if IEP Teams in rural school districts incur additional costs to meet a student's transition services needs, they may seek to use funds reserved for State-level activities for the "development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities." See 34 CFR §300.704(b)(4)(vi).

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have additional questions, please do not hesitate to contact Robert MacGillivray, the OSEP State contact for Colorado, at 202-245-7433 or by email at Robert.MacGillivray@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove". The signature is fluid and cursive, with the first name "Melody" and last name "Musgrove" clearly distinguishable.

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

cc: State Director of Special Education