

# TRANSITION PLANNING

A GUIDE FOR ADVOCATES



## **Acknowledgments**

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## **About the Education Law Center**

Founded in 1973, the Education Law Center (ELC) serves as the leading voice for New Jersey's public school children and has become one of the most effective advocates for equal educational opportunity and education justice in the United States. Widely recognized for groundbreaking court rulings on behalf of at-risk students, ELC also promotes educational equity through coalition building, litigation support, policy development, communications, and action-focused research in New Jersey, in other states, and at the federal level.

ELC's legal and policy advocacy, which includes such landmark rulings such as Abbott v. Burke, has significantly advanced the provision of fair school funding, high quality early education, safe and adequate school facilities, and school reform, especially to schools serving high concentrations of at-risk students and students with disabilities and other special needs. These successes have, in turn, resulted in strong academic gains and progress in closing student achievement gaps in New Jersey.

## **Disclaimer**

The information provided in this guide helps explain the laws affecting the rights of students with disabilities in transition planning cases in New Jersey, but should not be construed as legal advice. This manual is provided for educational and informational purposes only, and contains general information that may not reflect current or complete legal developments. Readers are encouraged to seek appropriate legal advice from a licensed attorney on the particular facts and circumstances of their case.

## Table of Contents

WHAT DOES “TRANSITION” MEAN FOR HIGH SCHOOL STUDENTS WITH DISABILITIES? .....	1
WHEN MUST TRANSITION PLANNING AND TRANSITION SERVICES BEGIN? .....	1
WHAT IS THE SIGNIFICANCE OF A STUDENT TURNING AGE 18? .....	2
WHAT IS A TRANSITION PLAN? .....	2
HOW ARE “APPROPRIATE MEASURABLE POSTSECONDARY GOALS” DEVELOPED? .....	2
WHAT ARE TRANSITION SERVICES? .....	4
HOW IS TRANSITION-RELATED PROGRESS MEASURED? .....	5
MUST TRANSITION SERVICES BE PROVIDED IN THE LEAST RESTRICTIVE ENVIRONMENT?.....	6
WHERE CAN I FIND SOME GOOD EXAMPLES OF TRANSITION PLANS? .....	7
HOW DOES TRANSITION PLANNING IMPACT THE TIMING OF GRADUATION? .....	7
WHAT IS A “SUMMARY OF PERFORMANCE”? .....	8
WHAT CAN I DO IF I AM NOT SATISFIED WITH THE SCHOOL DISTRICT’S PROVISION OF TRANSITION PLANNING AND SERVICES? .....	9
OUTSIDE OF SCHOOL DISTRICTS, WHICH GOVERNMENTAL AGENCIES PLAY A ROLE DURING THE TRANSITION PERIOD? .....	10
WHAT STEPS SHOULD BE TAKEN TO ENSURE THAT STUDENTS REQUIRING SIGNIFICANT SUPPORT IN ADULT LIFE RECEIVE NEEDED DDD SERVICES AFTER GRADUATION? .....	14
WHAT CAN I DO IF I AM NOT SATISFIED WITH THE SERVICES AND SUPPORT PROVIDED BY DDD, DVRS, AND/OR CBVI? .....	17
WHAT LAWS ASSIST INDIVIDUALS WITH DISABILITIES AFTER HIGH SCHOOL GRADUATION? .....	17
Appendix A.....	19
Appendix B.....	25
Appendix C.....	28
Appendix D.....	37
Appendix E .....	41

*Note: In using this publication, refer to Appendix B for a list of statutory and regulatory authorities, and to Appendix C for case law, upon which the information below is based.*

### **WHAT DOES “TRANSITION” MEAN FOR HIGH SCHOOL STUDENTS WITH DISABILITIES?**

“Transition” is a broad term, referring to the period of time during which a student with disabilities prepares to complete high school and to the process of preparation, including long-range planning, activities, and services aimed at helping the student move successfully from school into the adult world. The legal requirement that public school districts, including charter schools, provide transition planning and services to students with disabilities as part of their Individualized Education Program (“IEP”) helps to fulfill an important purpose of the federal Individuals with Disabilities Education Act (“IDEA”) that these students “be prepared to lead productive and independent adult lives, to the maximum extent possible.”

### **WHEN MUST TRANSITION PLANNING AND TRANSITION SERVICES BEGIN?**

In New Jersey, the initial elements of transition planning must be in place for the school year during which a student with disabilities turns age 14 (or earlier, if determined appropriate by the IEP team). At this time, the IEP must include “a statement of the student’s strengths, interests and preferences” and a program consistent with those strengths, interests and preferences intended to assist the student in developing or attaining postsecondary goals related to training, education, employment and, if appropriate, independent living. Information regarding outside agencies and graduation requirements (including modifications of these requirements) must also be included beginning with this IEP. Students ages 14 and older are referred to as “transition-age students.”

Once a child reaches middle school age, parents are encouraged to make a written request to the Child Study Team to conduct formal testing to assess the child's vocational skills and interests. Parents should also find out if the school has a specific staff member serving as transition coordinator and should request that person’s presence at relevant IEP meetings.

Beginning with the school year during which a student turns age 16 (or earlier, if determined appropriate by the IEP team) the IEP must also include “appropriate measurable postsecondary goals” based upon “age-appropriate transition assessments” and the transition services (including a course of study) needed to assist the student in reaching these goals. Goals are to be developed in the following areas:

- training,
- education,
- employment and,
- where appropriate, independent living.

Good transition planning is outcome-oriented and focuses on specific steps aimed at helping the student reach his or her goals, with emphasis on the needs, strengths and preferences of the individual student.

### **WHAT IS THE SIGNIFICANCE OF A STUDENT TURNING AGE 18?**

While this publication frequently refers to steps to be taken by “parents,” all rights under New Jersey special education law transfer to the student upon attainment of the 18<sup>th</sup> birthday unless the parent has obtained legal guardianship of the student. Students ages 18 and over who are not under legal guardianship are referred to as “adult students,” and the suggestions made in this publication for parents are also meant to apply to these students. The topic of whether to seek guardianship of a child with disabilities (as opposed to pursuing supported decision-making) is beyond the scope of this publication. Appendix A of this publication lists resources providing additional information about guardianship and supported decision-making.

Even if guardianship is not obtained, New Jersey regulations provide that a parent will continue to receive notice of meetings and proposed changes to an adult student’s program and that the school district or adult student may invite the parent to participate in meetings related to the student’s special education program. An adult student may also authorize (in writing) his or her parent to request mediation or a due process hearing and to make educational decisions on his or her behalf in connection with such proceedings. The Model IEP Form issued by the New Jersey Department of Education (NJDOE) (a link to which is contained in Appendix A of this publication) indicates that an adult student may, by writing a letter to the school, give his or her parent the right to act on his or her behalf in all special education matters. This can become very important in connection with the timing of graduation, a topic discussed below.

### **WHAT IS A TRANSITION PLAN?**

The portions of a student’s IEP related to transition are known as the “transition plan” and must be updated at least annually. Beginning with the IEP for the year during which a student turns 16, the two major components of a transition plan are student goals -- i.e., “appropriate measurable postsecondary goals”-- and the services needed to assist the student in reaching those goals. A “transition plan” need not be a stand-alone (separate) part of the IEP, as indicated by the NJDOE Model IEP Form and judicial interpretation of IDEA.

### **HOW ARE “APPROPRIATE MEASURABLE POSTSECONDARY GOALS” DEVELOPED?**

As a first step in crafting a transition plan, school districts are required to conduct age-appropriate transition assessments (evaluations) of the student. Both formal assessments, such as aptitude, achievement, and adaptive behavior tests, and informal assessments, including interviews and questionnaires, direct observations of the student, and interest inventories, are used in gathering the necessary information. Parents are encouraged to inquire about the

types of assessments being performed in order to ensure that they are thorough and suitable to the student. *Appropriate measurable postsecondary goals must be based on age-appropriate transition assessments.*

In developing “appropriate measurable postsecondary goals” for the IEP, it is helpful to view each component of this term – “appropriate,” “measurable,” and “postsecondary”-- separately as illustrated below:

“Appropriate” goals mean goals that are reasonable, suitable and fitting for the particular student, based on his or her interests, preferences, strengths and needs as demonstrated by the required assessments. Appropriate goals must be specific and tailored to the particular student, as opposed to “boilerplate” goals with vague or generic language.

Example: For a student whose assessments point toward a career involving working with young children, a goal to attend a technical school for training in automotive mechanics is not “appropriate.”

“Measurable” goals mean goals that are objectively observable or countable and contain explicit behavior – if a goal is “measurable,” then it is objectively possible to determine whether the goal has been met. A “measurable” goal refers to an outcome, as opposed to a process.

Example: “After exiting high school, Carla *will* attend a specialized college program to study hospitality.”

By contrast, a statement that the student “plans” or “expects” to explore various options would not meet the requirement of a “measurable” goal; language used in writing goals must be results-oriented, and goals should be specific.

“Postsecondary” goals mean goals that must by definition occur after the completion of high school. Activities that are currently occurring during school or could be undertaken during the school years are not “postsecondary” goals.

Examples: Continuing to work at the store where a student works part-time during high school is not a “postsecondary” goal unless the IEP indicates an increase in hours or change in responsibilities after graduation. “Exploring housing options” is not a postsecondary goal as this activity could be undertaken during the high school years (in addition to not being measurable).

*Students should attend IEP meetings where transition services are discussed. Even if a student does not attend these IEP meetings, the school must take steps to ensure that the student’s preferences and interests factor into development of the transition plan.*

## WHAT ARE TRANSITION SERVICES?

In addition to appropriate, measurable, postsecondary goals, a transition plan must include the transition services (including courses of study) needed to assist the student in reaching those goals. “Transition services” are defined in IDEA and corresponding New Jersey regulations to include instruction, related services, community experiences, development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. In practical terms, some examples of transition services are:

- Instruction in banking and budgeting, personal health, or cooking
- Training in use of public transportation and help in exploring transportation options
- Assistance with satisfying admission requirements for vocational/technical school, college, or other postsecondary educational setting
- Vocational and/or pre-vocational training, including job sampling in local businesses or on school premises, distribution of information about career fairs
- Provision of links to other governmental agencies and community resources offering post-school support (including information pertaining to adult healthcare).

In addition to describing the transition services to be provided, statements of transition services in an IEP should include both specific timeframes and responsible parties. Inclusion of those specifics allows parents to monitor the school district’s compliance with their child’s transition plan. A few examples of statements of transition services including specific timeframes and responsible parties are as follows:

- Direct instruction on counting money with various denominations – 3<sup>rd</sup> quarter of 10<sup>th</sup> grade year – Math Teacher
- Research various jobs in hospitality industry -- 4<sup>th</sup> quarter of 10<sup>th</sup> grade year – student, Social Studies, and Community Living teachers
- Direct instruction on hygiene -- 1<sup>st</sup> quarter of 10<sup>th</sup> grade year -- Community Living Teacher
- Clerical job sampling experience in school office -- two one-hour sessions per week, 1<sup>st</sup> quarter of 11<sup>th</sup> grade -- Vocational Education instructor

The Model IEP Form issued by NJDOE (listed in Appendix A) contains a chart in which each transition service is listed along with its expected date of implementation and responsible person or agency.

In attempting to develop a robust transition plan for their child along with the other members of the IEP team, parents should be aware that school districts may contract with outside agencies to provide transition services. An example of an outside contractor providing one-on-

one job sampling services is the Arc of New Jersey's Project HIRE (listed in Appendix A) which offers individualized vocational assessments and job sampling experiences at employers in the student's community for an hourly fee charged to the school district. Parents are encouraged to research the transition services available from outside agencies and to request such services where necessary to prepare their child for life after graduation.

For students whose goal is to attend college after graduation, parents should make sure that the IEP addresses the student's fulfillment of all course and standardized testing requirements, not only for graduation but also for college admission (parents should check admission requirements with any colleges being considered). Appendix A provides links to information about requesting accommodations for the SAT and ACT tests and a link to a list of schools that do not require SAT/ACT scores for admission. In the final years of school, parents should also refuse to waive the school district's obligation to conduct triennial reevaluations, as recent evaluations may be required by postsecondary institutions or agencies providing adult services. Finally, parents should make sure that the potential use of assistive technology for their child is thoroughly considered during the transition years, since school districts have both a legal and fiscal obligation to provide assistive technology evaluations and equipment when necessary for the student to achieve the "free and appropriate public education" (FAPE) required under IDEA. Disability Rights New Jersey's assistive technology program, which offers help in this area, is listed in Appendix A of this publication.

### **HOW IS TRANSITION-RELATED PROGRESS MEASURED?**

In addition to *postsecondary* goals, the IEP of a transition-age student should include *annual goals linked to those postsecondary goals*, i.e., aimed at enabling the student to meet his or her postsecondary goals or make progress toward such goals. Like postsecondary goals, the student's annual goals must be *measurable*, meaning that they are written in a way that makes it possible to determine whether the goal has been satisfied. Annual goals describe the skills a student will acquire within an academic year to progress toward postsecondary long-range goals. Parents should monitor their child's transition-related progress by reference to his or her success (or failure) in meeting annual goals; additional transition-related services may be needed if annual goals are not being met. Parents should also request progress reports about their child's community work experiences and other transition-related activities.

While there is no specific statutory or regulatory provision regarding annual goals related to transition, the need to include such goals in the IEP derives from the general requirement (under IDEA and New Jersey regulations) that the IEP include measurable annual academic and functional goals related to the student's involvement in the general education curriculum as well as "each of the student's other educational needs that result from the student's disability."



Examples of Annual Goals Linked to Postsecondary Goals:

Postsecondary Goal: “After exiting high school, Carla will attend a specialized college program to study hospitality.”

Annual Goal Linked to Postsecondary Goal: “Given scenarios and simulated instruction, Carla will follow 100% of steps for appropriate interactions with a variety of individuals on 8 of 10 trials by the end of the 3<sup>rd</sup> quarter.”

Postsecondary Goal: “Upon graduation from high school, Stephanie will live semi-independently with a roommate in an apartment close to her parent’s home with supports provided through the local independent living center.”

Annual Goal Linked to Postsecondary Goal: “Given the equipment and supplies for washing clothes and task analysis, Stephanie will follow the steps to wash a load of clothes with 100% accuracy by June 2019.”

Postsecondary Goal: “After graduation from high school, Alex will enroll at a technical school and will take business math classes to improve work-related math skills related to a business career.”

Annual Goal Linked to Postsecondary Goal: “Given direct instruction in high school business math and guided practice, Alex will create spreadsheets using money management software with 85% accuracy by the spring semester of this IEP.”

**MUST TRANSITION SERVICES BE PROVIDED IN THE LEAST RESTRICTIVE ENVIRONMENT?**

Like other aspects of the educational program of a student with disabilities, transition services must be provided in the least restrictive environment (“LRE”), meaning that, to the maximum extent appropriate, a student with disabilities is educated with individuals who do not have disabilities. In a guidance letter issued in 2012 (cited in Appendix A under Transition Information), the federal Department of Education described the application of LRE principles to transition services, indicating that a work placement that includes individuals with and without disabilities would be considered as time spent in the regular (general education) classroom for LRE purposes. A segregated employment program may be an appropriate transition service only if the IEP team makes such a determination based on the individual needs of the child, in accordance with the LRE requirements. (Note that the federal Workforce Innovation and Opportunity Act (“WIOA”), discussed below in connection with vocational rehabilitation, prohibits school districts from placing students in local sheltered workshops to perform work for subminimum wages.)

## **WHERE CAN I FIND SOME GOOD EXAMPLES OF TRANSITION PLANS?**

The National Technical Assistance Center on Transition (NTACT), a federally funded entity consisting of a partnership of several universities, has published Student Case Studies containing examples of appropriate transition assessments, postsecondary goals, transition services, and annual goals related to transition for fictional students with a variety of disabilities (including autism, multiple disabilities, learning disabilities, and emotional/behavioral disabilities). The case studies also give samples of IEP language *not* meeting relevant legal requirements -- so-called “non-examples” -- along with useful explanations of why the “non-examples” are flawed. The Student Case Studies may be found online as indicated in Appendix A of this publication; Appendix E of this publication provides a modified excerpt from one of the Case Studies. In reading the NTACT Case Studies, parents should be aware that “Indicator 13” refers to federal monitoring of state compliance with transition requirements.

Parents should be certain to take home and review any proposed statement of transition goals and services received at an IEP meeting. In doing so, parents may find that the transition-related portions of their child’s proposed IEP lack detail and specificity. Using the examples contained in this publication and on the NTACT website, parents should work with the rest of the IEP team to craft a meaningful transition plan for their child containing annual goals and transition services that can be regularly monitored.

## **HOW DOES TRANSITION PLANNING IMPACT THE TIMING OF GRADUATION?**

Under IDEA, students with disabilities are potentially entitled to remain in school until age 21; New Jersey regulations interpret this age limitation to allow students to remain in school until the end of the school year during which they turn 21. The definition of “student age” in the regulations indicates a June 30 cutoff date for determining whether a student has attained age 21 during a given school year and “aged out” of special education services. An important exception to IDEA’s “age 21” rule is that *the receipt of a regular high school diploma terminates a student’s eligibility for special education services* -- there is no absolute duty for a school district to provide special education services through age 21. Thus, a student with a disability who accepts a regular high school diploma at age 18, 19, or 20 no longer has a right to receive any special education services, including transition services.

In the case of students with the most significant cognitive disabilities, it is the norm to remain in high school beyond the four years typically anticipated for students without disabilities. For students whose disabilities are less severe, differences of opinion exist regarding the timing of graduation: some advocates caution against school districts rushing to graduate these students before they are prepared for life after school, while others argue that the percentage of students with disabilities graduating high school within 4 years (approximately 67% nationally for the 2016-17 school year) should be higher.

The content of a student’s transition plan is relevant to the timing of graduation in that a student should be allowed to remain in school to continue working on unmet transition-related goals (and to receive the services required to meet such goals) even if the student has already satisfied the academic requirements for graduation. Graduation with a regular diploma is considered a “change in placement” under the special education laws; a school district intending to graduate a student with disabilities prior to the end of the school year during which the student turns 21 must provide written notice of such change, triggering “stay put” protection if the parent (or adult student) disagrees and files for mediation or due process. Parents should discuss the timing of graduation with the other members of the IEP team well in advance in order to discern the school district’s intentions and should work to revise their child’s transition plan each year to address unmet needs. Parents should also discuss the issue with their child in an effort to avoid disagreement between parent and adult student as to graduation date. (Note that students continuing in school past the regular 12<sup>th</sup> grade year may participate in graduation ceremonies without actually accepting a diploma.)

Parents of students who will require services from the New Jersey Division of Developmental Disabilities (DDD) after graduation should be aware that DDD services do not begin until age 21; graduation of such students prior to age 21 creates a difficult “gap” in services, which may be made even more difficult by possible waiting lists for desired adult services. Appendix D of this publication contains NJDOE’s Model Notice of Graduation.

### **WHAT IS A “SUMMARY OF PERFORMANCE”?**

Prior to graduation or the end of the school year during which the student “ages out” of special education, the school district must provide the student with a written summary of academic achievement and functional performance, known as the “summary of performance”. As indicated in NJDOE’s Model Summary of Performance, contained in Appendix D of this publication, a summary of performance should include not only the student’s present levels of academic achievement and functional performance but also recommendations to assist the student in meeting postsecondary goals; the model form also includes a list of recommended resources and boxes in which to note eligibility determinations from various agencies. A summary of performance, if written thoroughly, can be very useful to agencies or postsecondary schools in evaluating and serving a student after high school graduation. The summary may, for example, serve as part of the documentation of a student’s need for academic adjustments or accommodations in a postsecondary setting and can provide useful guidance to individuals working with the student after graduation.

## **WHAT CAN I DO IF I AM NOT SATISFIED WITH THE SCHOOL DISTRICT'S PROVISION OF TRANSITION PLANNING AND SERVICES?**

If the district is failing to provide agreed-upon transition services contained in the IEP, a parent should immediately contact the child's case manager and the district's Director of Special Services to resolve the matter. It is best to state the problem in writing (even if contact is also made by telephone or in person). If efforts to enforce the terms of a child's IEP with district personnel are unsuccessful, a parent may seek to resolve the dispute through mediation, a due process hearing, or complaint investigation. Appendix A contains NJDOE website links related to mediation, due process, and complaint investigation procedures, as well as a link to ELC's publication "The Right to Special Education in New Jersey," which includes information on dispute resolution.

If a parent is dissatisfied with their child's transition plan, the parent should request an IEP team meeting (with the participation of the school's transition coordinator) to begin the process of revising the IEP; such meeting must be held within 20 calendar days of the request, excluding school holidays but not summer vacation. A request for updated assessments or for an independent educational evaluation (IEE) (if the parent disagrees with the school district's assessments) may also be necessary. ELC's special education publication noted in Appendix A includes information on IEEs. If a parent is unsuccessful in obtaining desired changes to the IEP in this manner, the parent may attempt to obtain a better result by contacting the district's Director of Special Services before seeking relief through mediation, due process hearing, or complaint investigation. (Note that while the complaint investigation procedure can be used to address both a district's failure to provide specific, agreed-upon services already contained in an IEP and claims that the IEP as written does not provide FAPE, as a practical matter, parents are often more successful using that procedure to address the former.)

A broad range of remedies are potentially available for a school district's failure to comply with IDEA. Courts have the ability to fashion remedies, known as "compensatory education," aimed at placing the student in the position he or she would be in had the school district's violation not occurred; compensatory education includes services after the age of 21 to compensate for a school district's failure to provide FAPE during the student's years of educational entitlement. IDEA and corresponding New Jersey regulations also contain specific rules obligating school districts which have failed to provide FAPE to provide tuition reimbursement to parents who have removed a student from public school and enrolled the student in private school at their own expense. Fundamental to the law in this area are the limiting principles that: (1) IDEA's requirement of FAPE does not obligate school districts to provide an "ideal" education or to guarantee a particular outcome, and (2) the adequacy of an IEP is measured at the time it is written, rather than after the fact if desired goals are not met. The Supreme Court has most recently described FAPE as "an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances," a standard consistent with the

“meaningful benefit” standard previously articulated by the Third Circuit, which includes New Jersey.

While IDEA and New Jersey’s special education regulations contain numerous rules aimed at protecting students and parents, not every violation of these rules gives rise to a remedy. Both IDEA and the corresponding New Jersey regulation indicate that a remedy is available in due process based on “substantive grounds,” meaning that remedies are available if the school district failed to provide the child with FAPE. In matters alleging so-called “procedural violations” of IDEA, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies (1) impeded the child’s right to FAPE, (2) “significantly impeded” the parents’ opportunity to participate in the decision-making process regarding the provision of FAPE to the child, or (3) caused a “deprivation of educational benefits.” Although transition planning and services represent an important part of a child’s special education program, courts in the Third Circuit have characterized IEP deficiencies in this area as “procedural violations” of IDEA. A review of cases indicates that it is difficult for parents to obtain relief based on transition-related issues, especially where a student demonstrated “educational benefit” by performing well academically and passing standardized tests. Claims that FAPE was denied by reason of a failure of parental opportunity for participation have not succeeded under circumstances where parents communicated regularly with school district staff or demonstrated an overall pattern of advocating for their child. Finally, courts in the Third Circuit have hesitated to characterize transition plans as defective in the first instance, suggesting that school districts have met their obligations by providing transition “checklists” and information about outside agencies that can assist with transition, placing a share of responsibility on parents and students to follow up on this information. Courts have emphasized that school districts need not guarantee that postsecondary goals are actually met.

Given the difficulty of obtaining a remedy in court for deficient transition planning “after the fact,” parents should be proactive, insisting that transition planning begins at age 14 even if the Child Study Team suggests that the child is “not ready,” making sure that appropriate assessments are conducted without delay, working with the Child Study Team to craft an individualized and robust transition plan, ensuring annual updates, and monitoring the school district’s implementation of the plan over time.

#### **OUTSIDE OF SCHOOL DISTRICTS, WHICH GOVERNMENTAL AGENCIES PLAY A ROLE DURING THE TRANSITION PERIOD?**

While the obligations of school districts with respect to postsecondary transition planning and services are well defined, the role of outside state agencies is less clear. New Jersey special education regulations state that the IEP of students age 14 and over must include, as appropriate, “a description of the need for consultation from other agencies that provide

services for individuals with disabilities including, but not limited to, the Division of Vocational Rehabilitation Services” and “a statement of any needed interagency linkages and responsibilities.” The regulations also provide that “a representative of any other agency that is likely to be responsible for providing or paying for transition services shall be invited to attend the IEP meeting” at which transition services will be considered. Notwithstanding this language, outside agencies are not legally required to attend IEP meetings, and there is no clear regulatory guidance as to the steps a school district should take if an outside agency fails to attend. Parents are encouraged to contact outside agencies on their own, if desired, to seek the attendance of agency representatives at IEP meetings as well as to seek assistance during the transition period rather than relying upon school districts to make necessary arrangements.

The three state agencies most commonly associated with postsecondary transition and with the provision of needed services after graduation are the Division of Vocational Rehabilitation Services (DVRS), the Commission for the Blind and Visually Impaired (CBVI), and the Division of Developmental Disabilities (DDD), discussed below. In understanding the roles and relationships of these agencies, it is useful to note that since 2012, New Jersey has been an “Employment First” state. Employment First is a national movement (supported by the U.S. Department of Labor, Office of Disability Employment) based on the premise that all citizens, including individuals with significant disabilities, are capable of full participation in integrated employment and community life. New Jersey’s Employment First initiative applies to each state agency involved in assisting individuals with disabilities, promotes competitive employment as the preferred post-education outcome for all such individuals, and impacts both transition planning and the delivery of adult services.

While this publication concentrates on the transition of students with disabilities out of secondary education, families served by the New Jersey Children’s System of Care (CSOC) -- which provides services to children with emotional and behavioral health challenges, developmental and intellectual disabilities, and substance use challenges – must also prepare for transition out of CSOC services at age 21. Assuming that services previously obtained through CSOC will still be needed, transition to the adult service system should be discussed with providers well in advance of the 21<sup>st</sup> birthday. Adult services for individuals with developmental disabilities are provided by DDD, while the Division of Mental Health and Addiction Services (DMHAS) oversees the provision of mental health and substance abuse-related services to adults. Appendix A contains links to Frequently Asked Questions regarding DMHAS, a DMHAS directory, and a county-by-county list of Family Support Organizations (FSOs), which may provide assistance to families transitioning from CSOC to adult services.

## DVRS

The New Jersey DVRS, an entity governed by the federal Rehabilitation Act, provides a wide range of services to residents with disabilities (other than individuals with visual impairments, who are served by CBVI) in order to enable eligible individuals to obtain employment. DVRS services include career counseling, job placement assistance, one-on-one job coaching including on-the-job coaching after a job is obtained, evaluations (including assistive technology evaluations), financial planning services for individuals receiving government benefits, job accommodations assistance, support with postsecondary education and training, and interpretation services.

Students ages 14 and up may apply to receive DVRS services. The first step in seeking DVRS services is “referral,” a simple process which precedes any determination of eligibility. Although school personnel often refer students to DVRS, parents and students may easily complete a DVRS referral form on their own. A DVRS staff member is assigned to each public high school in New Jersey; parents should check with their school districts about annual information presentations offered by DVRS in schools.

Consistent with its mission, DVRS generally serves individuals with disabilities who have a potential for employment but need assistance to realize this potential. Many of the services provided by DVRS – including, importantly, one-on-one job coaching -- require a determination of eligibility and the creation of an Individualized Plan for Employment (IPE). A 2014 amendment to federal law, however, expanded the population of students who may receive services from DVRS during the transition period (ages 14-21). Under WIOA, which amended the Rehabilitation Act, all students with disabilities, regardless of whether they have applied for or been determined eligible for vocational rehabilitation services, are entitled to receive pre-employment transition services (“pre-ETS”) from DVRS. These services are available to students in traditional school settings as well as those who are homeschooled or in other alternative secondary education programs; entitlement also extends to students with disabilities up to age 21 who have graduated high school and are attending postsecondary education programs. Pre-ETS (which may be provided in a group or on an individual basis) are defined to include job exploration counseling, work-based learning experiences that may include in-school or after-school opportunities with supports, counseling regarding postsecondary education, workplace readiness training, and instruction in self-advocacy, which may include peer mentoring. Pre-ETS are meant to enhance, rather than replace, the transition services that a school district must provide to students with an IEP. As of the date of this publication, DVRS is in the process of finalizing a Memorandum of Understanding clarifying the roles and responsibilities of school districts and DVRS in this area.

An overriding purpose of WIOA is the achievement of “competitive integrated employment” for individuals with disabilities. In furtherance of this goal, WIOA prohibits employers holding

“section 14(c) subminimum wage certificates” from hiring and paying subminimum wages to youth with disabilities (24 years of age or younger) unless the employer verifies that the youth has completed a set of requirements including the receipt of transition services under IDEA and/or pre-ETS. As noted above, the law also prohibits school districts from placing students in local sheltered workshops to perform work for subminimum wages.

Appendix A of this publication contains references to various parts of the DVRS website. The website includes online referral forms for regular DVRS services as well as pre-ETS and a description of the steps involved in seeking DVRS services.

### CBVI

The New Jersey CBVI provides vocational rehabilitation services and programs to all residents with visual impairments in order to enable eligible individuals to “maximize their employment outcome, independence, and integration into the workplace and their communities.” CBVI’s Transitional Program services include vocational evaluations, counseling, guidance and training, job placement assistance, a college preparation summer program, a work skills summer program, and many other services. A link to federal guidance, “Educating Blind and Visually Impaired Students,” is included in Appendix A. This guidance describes specialized services that may be needed by students with visual impairments (including during transition) such as assistive technology training, orientation and mobility services (such as cane travel), and travel training.

Students can be referred to the CBVI’s Transitional Program beginning at age 14; regulations governing CBVI indicate that the need for these services must be reflected in the student’s IEP and that the student must meet eligibility requirements for vocational rehabilitation services. The transition counselor will visit the student’s school and will be in contact with the parent or legal guardian, working with the student and parent or guardian to create goals focused on successful transitioning from high school to college or work. Transition counselors arrange for job exploration and testing to assist the student in career planning and can also provide consultation to school personnel on best practices for assisting students with visual impairments. During a student’s last year of formal education, the transition services supervisor or the student’s transition counselor will confer with the appropriate vocational rehabilitation supervisor to determine appropriate actions, which may include transfer to a vocational rehabilitation counselor, transfer for college services, or closure of the case. An IPE must be developed for each student by the time they transition from their formal education program, except for those students who plan to attend the Joseph Kohn Training Center, a CBVI program, upon graduation to formulate a vocational goal (development of the IPE may be deferred for such students).



Like DVRS, CBVI is governed by the Rehabilitation Act as amended by WIOA and is accordingly obligated to provide pre-ETS to all students with vision-related disabilities. Existing educational service arrangements between CBVI and school districts which contract with CBVI for educational services should facilitate the coordination of pre-ETS services with the transition services offered by those districts. A school district need not have an existing educational services contract with CBVI, however, for students in the district to receive CBVI transition counseling services.

Contact information for CBVI is contained in Appendix A of this publication in addition to links to the Joseph Kohn Training Center and to Business Enterprise New Jersey, a program under which individuals who are legally blind are provided with training and given priority to operate vending machines, newspaper stands, snack bars, and cafeterias in government buildings as well as some private locations.

### DDD

As described more fully below, the New Jersey DDD provides supports and services to adults with significant disabilities. While DDD representatives may be invited to IEP meetings (and Support Coordinators may potentially attend exit IEP meetings and transition-related meetings during a student's final year of school), there is no general obligation on the part of DDD to provide individualized transition services to students. DDD's involvement in transition planning is more general: DDD funds the Planning for Adult Life project, a statewide project to assist young adults ages 16-21 with transition, offering informational sessions, webinars and resource guides. In recent years, DDD has also published an annual timeline for students "aging out" of school in a given academic year with steps to take to access services and supports from DDD. DDD's most recent timeline, entitled "A Timeline for Students Exiting School and Turning 21," was issued in September 2019 and is intended to apply to future academic years. Website links to this timeline and to the Planning for Adult Life project are contained in Appendix A of this publication.

An individual must be at least 18 years of age to apply for eligibility for DDD and must be at least 21 years old to receive DDD services. While schools may assist families with the DDD application process, it is the family's responsibility to obtain and submit all necessary materials for DDD eligibility. (See Appendix A for link to DDD application information.)

### **WHAT STEPS SHOULD BE TAKEN TO ENSURE THAT STUDENTS REQUIRING SIGNIFICANT SUPPORT IN ADULT LIFE RECEIVE NEEDED DDD SERVICES AFTER GRADUATION?**

#### Qualifying for DDD Services:

Upon graduation, students with more severe disabilities -- ages 21 and over -- may be eligible to receive services and supports through DDD; a wide variety of services are available, including

adult day programs, one-on-one assistance, transportation, supported community activities and therapies. (DDD’s timeline for students turning 21 indicates that students whose 21<sup>st</sup> birthday falls before April of their graduation year may, “if immediate services are needed at 21,” receive certain DDD services, such as behavioral supports or respite, prior to their graduation date.) Not all students receiving special education services are eligible for DDD services -- the definition of “developmental disability” limits eligibility to those individuals whose disabilities are chronic and severe in nature and result in substantial limitations in three or more major activities of daily living. It is a common misconception, however, that students must be rejected by DVRS in order to receive DDD services – individuals may receive services from both DDD and DVRS at the same time if determined eligible by both agencies, and New Jersey, through its Employment First initiative, aims to enable competitive employment for as many individuals as possible.

In addition to limiting DDD services to individuals 21 and older (with younger individuals served by CSOC), New Jersey has in recent years implemented a “Medicaid-based fee-for-services” funding system for DDD services. As a result, parents of students anticipated to need DDD services after graduation should take the following two steps when the student attains the age of 18 or as soon as feasible thereafter:

- (1) Secure Medicaid eligibility for the student, and
- (2) Apply for DDD eligibility (a full intake process is required regardless of any past approval).

The ideal scenario for students requiring DDD services is to experience a continuity of services, with as short a time gap as possible (or no gap at all) between graduation and the commencement of needed adult services. Some school districts have engaged in an unfortunate practice of “graduating” students with significant disabilities before the age of 21, triggering a time lag before DDD services may commence. Since parental status alone is insufficient under the law to allow parents of individuals over 18 to make decisions and execute necessary documents pertaining to adult services, consideration of whether to pursue legal guardianship should occur before a student’s 18<sup>th</sup> birthday.

In order to meet the critical requirement of Medicaid eligibility noted above, DDD recommends that parents apply for Supplemental Security Income (SSI) from the Social Security Administration for their child when the child turns 18. For children ages 18 and older, the Social Security Administration does not count parental income and resources in evaluating eligibility for SSI. Every New Jersey resident who receives SSI automatically receives New Jersey Medicaid, satisfying this requirement for DDD services.

### The Supports Program:

The basic DDD program serving individuals who continue to reside with family is the Supports Program. Website links to a comprehensive manual describing the Supports Program (revised in 2019), as well as a shorter version for families, are contained in Appendix A of this publication. These manuals provide additional information about Medicaid and DDD eligibility, other steps needed to secure adult services, and the wide variety of services funded through the Supports Program.

The type and quantity of services available to a given graduate under the Supports Program depends on the “budget” assigned to that student based on the results of the New Jersey Comprehensive Assessment Tool (NJCAT), a detailed online (or telephone) survey about the graduate’s level of functioning that is completed during the final year of school, generally by the parent. The NJCAT generates a “tier assignment” for each graduate reflecting his/her level of need for support services; current Supports Program budgets for basic items range from \$19,000 to \$78,000 per year, depending on the graduate’s tier, and are listed in Section 3.5 of the comprehensive Supports Program manual. Budget monies are not disbursed to families but are paid directly to support providers selected by families; the Supports Program aims to enhance family choice and individualization of services.

While there is no statewide “waiting list” for the Supports Program, finding and obtaining the appropriate services can be very time consuming. Parents of students for whom adult day programs may be appropriate, for example, must visit potential programs and seek admission to the desired program; individual programs may have waiting lists. While Support Coordinators are charged with assisting parents through this process, families are not assigned Support Coordinators until the spring of the student’s graduating year; parents seeking continuity of services after graduation are advised to begin visiting programs to narrow down options well before this time.

### Community Care Program:

DDD’s Community Care Program (CCP) provides individuals meeting certain “level of care” requirements with much larger budgets than the Supports Program. While CCP is generally thought of as the program for families seeking living arrangements for children with disabilities outside the family home, these larger budgets can also be used to fund services for individuals still living at home. Families of individuals with severe disabilities face a complex and changing landscape under New Jersey’s Medicaid-based system, especially in the area of housing: while CCP does not directly fund “room and board,” individuals in CCP will generally be approved for rental subsidies, as described in the resources cited in Appendix A.

As of the date of this publication, New Jersey has a “priority waiting list” of over 2000 individuals seeking CCP funding. Families can qualify for placement on the priority waiting list when both parents have attained age 55 (or other specified conditions are met) but, absent special circumstances requiring expedited action, can anticipate a period of approximately 15 years (as of the date of this publication) before the individual reaches the top of the priority waiting list. The speed with which individuals move up the waiting list varies from year to year depending on the state budget.

### **WHAT CAN I DO IF I AM NOT SATISFIED WITH THE SERVICES AND SUPPORT PROVIDED BY DDD, DVRS, AND/OR CBVI?**

The Community Health Law Project and Disability Rights New Jersey are two organizations which may provide assistance to persons needing additional support from DDD, DVRS, and/or CBVI. Contact information for these organizations is contained in Appendix A of this publication.

### **WHAT LAWS ASSIST INDIVIDUALS WITH DISABILITIES AFTER HIGH SCHOOL GRADUATION?**

This publication emphasizes the importance of maximizing the services that school districts are obligated to provide under IDEA and New Jersey special education law prior to the expiration of a student’s educational entitlement at the end of the school year during which the student turns 21 (or at the time of graduation, if earlier).

Students who had an IEP during high school and are going on to colleges, universities, or specialized career/technical schools should be aware that the federal laws protecting students with disabilities in postsecondary education, notably, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, differ in important ways from IDEA. While school districts have the affirmative obligation to identify students with disabilities, assess their needs, and provide FAPE to every such student (with the participation of parents in the decision-making process), postsecondary schools are not subject to these legal requirements. Rather, students with disabilities who wish to receive academic adjustments or accommodations in a postsecondary setting are responsible for informing the school of their disability, submitting the required documentation, and requesting the needed adjustments or accommodations; provisions for parental involvement are lacking. Students should find out which office or staff members within a postsecondary school handle accommodation requests and make contact with the appropriate persons in advance of the start of classes. The laws protecting students with disabilities in postsecondary settings are antidiscrimination laws; in very general terms, these laws require postsecondary institutions to make minor academic adjustments but not substantial modifications of the curriculum; students with disabilities must be able to meet the basic requirements applicable to other students. Examples of adjustments

and accommodations in the college setting might include reducing a course load or adjusting class schedules, providing note takers, recording devices or sign language interpreters, providing extended time for testing (without changing the content of the test) and equipping school computers with screen-reading, voice recognition, or other adaptive software or hardware. Sources of additional information about laws protecting students with disabilities in the postsecondary setting are listed in Appendix A of this publication.

Students with disabilities pursuing employment should likewise become familiar with the federal and state laws prohibiting employment-related discrimination based on disability. These laws continue to evolve over time, reflecting the impact of new assistive technologies as well as overall policy favoring competitive integrated employment of individuals with disabilities. Title I of the Americans with Disabilities Act requires employers of 15 or more employees to make “reasonable accommodations” to qualified applicants or employees with disabilities unless doing so would impose “undue hardship” on the employer. “Reasonable accommodations” may include making facilities accessible or modifying work schedules, equipment or devices. Section 504 of the Rehabilitation Act prohibits employment discrimination based on disability by recipients of federal financial assistance. WIOA, discussed above in connection with DVRS, prohibits disability-based discrimination by programs forming part of the American Jobs Center/Career OneStop system. (A website link to American Job Centers, entities created under federal law which provide employment-related information and assistance in searching for jobs and finding training, is contained in Appendix A of this publication). New Jersey’s state Law Against Discrimination goes further than the Americans with Disabilities Act in covering all employers (except federal employers) regardless of size. Individuals wishing to learn more about workplace accommodations or to receive free assistance on this issue may wish to visit the website and call the Job Accommodation Network, an organization funded by the US Department of Labor, Office of Disability Employment Policy. Appendix A of this publication includes a website link to the Job Accommodation Network as well as additional resources for students pursuing employment. Appendix B of this publication contains the names and citations of the laws referenced in this section (under the heading “Other Laws Protecting Individuals with Disabilities”).

## Appendix A

### Resources

#### **Assistive Technology for Students and Adults:**

*Assistive Technology & Transition to Adult Life* (Disability Rights New Jersey bulletin),  
<https://www.drnj.org/pdf/AT%20and%20transition%20bulletin.pdf>.

Richard West Assistive Technology Advocacy Center (ATAC) of Disability Rights New Jersey (DRNJ): <http://drnj.org/atacprogram.htm> (information and advocacy for individuals requiring assistive technology).

#### **CBVI Contact Information and Guidance for Visually Impaired Students:**

CBVI Coordinator of Vocational Rehabilitation and Transition Services:

Amanda Gerson -- Telephone: 973-648-3660; email: [Amanda.Gerson@dhs.state.nj.us](mailto:Amanda.Gerson@dhs.state.nj.us).

Local CBVI Offices: See list at <http://www.state.nj.us/humanservices/cbvi/facilities/> or call (877) 685-8878 or (973) 648-3333.

Joseph Kohn Training Center: <https://www.state.nj.us/humanservices/cbvi/services/jkrc/>, telephone (732) 937-6363.

Business Enterprise New Jersey: <https://www.nj.gov/humanservices/cbvi/services/bep/>.

*Educating Blind and Visually Impaired Students; Policy Guidance* (US Department of Education, Office of Special Education and Rehabilitative Services 2000),

<https://www.federalregister.gov/documents/2000/06/08/00-14485/educating-blind-and-visually-impaired-students-policy-guidance>. See also *Dear Colleague Letter: Braille Instruction* (US Department of Education, Office of Special Education and Rehabilitative Services 2013),  
<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/brailledcl-6-19-13.pdf>;

*Memorandum re: Eligibility Determinations for Children Suspected of Having a Visual Impairment* (US Department of Education, Office of Special Education and Rehabilitative Services 2017), <https://sites.ed.gov/idea/files/letter-on-visual-impairment-5-22-17.pdf>.

*Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools* (U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office for Civil Rights and Office of Special Education and Rehabilitative Services 2014),

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-faqs-effective-communication-201411.pdf> with accompanying *Dear Colleague Letter*,  
<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-effective-communication-201411.pdf>.

## **DDD Services:**

Information about Applying for DDD Eligibility:

<https://www.state.nj.us/humanservices/ddd/services/apply/> and  
<https://www.state.nj.us/humanservices/ddd/documents/application-for-eligibility-english.pdf>.

*A Timeline for Students Exiting School and Turning 21* (Issued September 2019):

<https://www.state.nj.us/humanservices/ddd/documents/graduates-timeline.pdf>.

*Supports Program Policies and Procedures Manual* (Revised 2019):

<https://www.nj.gov/humanservices/ddd/documents/supports-program-policy-manual.pdf>

*Supports Program Quick Guide for Families* (Revised 2017):

<https://nj.gov/humanservices/ddd/documents/family-guide-to-sp-policy-manual-english.pdf>  
(English); <https://nj.gov/humanservices/ddd/documents/family-guide-to-sp-policy-manual-spanish.pdf> (Spanish)

Community Care Program Waiting List Information:

*Division of Developmental Disabilities Circular #8,*

[https://www.state.nj.us/humanservices/ddd/documents/ddd%20web%20current/CIRCULARS/DC8\\_3.pdf](https://www.state.nj.us/humanservices/ddd/documents/ddd%20web%20current/CIRCULARS/DC8_3.pdf). Proposed amendments to N.J.A.C. 10:46C, the regulation which governs the CCP waiting list, were published in the New Jersey Register on October 21, 2019 and can be found at <https://www.nj.gov/humanservices/ddd/documents/proposed-readoption-with-amendments-njac-10.46C.pdf>.

Housing Issues:

*The Journey to Community Housing with Supports: A Road Map for Individuals and their Families in New Jersey*, [http://shanj.org/images/2018\\_uploads/Housing\\_Guide\\_2018.pdf](http://shanj.org/images/2018_uploads/Housing_Guide_2018.pdf); *The Journey to Community Housing with Supports, A Companion Guide, Case Studies: Stories shaping new housing opportunities*, [http://shanj.org/images/2018\\_uploads/SHA\\_Case\\_Study\\_Companion\\_Final.pdf](http://shanj.org/images/2018_uploads/SHA_Case_Study_Companion_Final.pdf).

*DDD Housing Assistance: Frequently Asked Questions,*

[http://www.nj.gov/humanservices/ddd/documents/housing\\_assistance\\_faqs.pdf](http://www.nj.gov/humanservices/ddd/documents/housing_assistance_faqs.pdf) (2017).

*Community Care Program Policies & Procedures Manual,*

<https://www.nj.gov/humanservices/ddd/documents/community-care-program-policy-manual.pdf> (March 2019)(Section 18).

## **Directory of Organizations and Programs Serving NJ Residents with Disabilities:**

*New Jersey Resources 2019-2020 directory* (NJ Division of Disability Services),

[https://www.state.nj.us/humanservices/dds/documents/RD/2019/FINAL\\_2019\\_DHS\\_NJ\\_Resource%20Guide.pdf](https://www.state.nj.us/humanservices/dds/documents/RD/2019/FINAL_2019_DHS_NJ_Resource%20Guide.pdf).

### **Disputes Regarding Transition Planning or Other Special Education Issues:**

Mediation and due process: <http://www.state.nj.us/education/specialed/due/>.

Complaint investigation: <https://www.nj.gov/education/specialed/complaint/>.

Perry A. Zirkel, *The Remedial Authority of Hearing and Review Officers under the Individuals with Disabilities Education Act: The Latest Update*, 37 Nat'l Ass'n Admin. L. Judiciary 505 (2017), <https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1623&context=naalj>.

### **DVRS Information:**

Information for Students with Disabilities:

[https://careerconnections.nj.gov/careerconnections/plan/foryou/disable/students\\_with\\_disabilities.shtml](https://careerconnections.nj.gov/careerconnections/plan/foryou/disable/students_with_disabilities.shtml).

DVRS Contact Information:

Central office: (609) 292-5987 (voice), (609) 292-2919 (TTY), or 609-498-6221 (video phone).

Local DVRS Offices are listed at:

[https://careerconnections.nj.gov/careerconnections/plan/foryou/disable/dvrs\\_field\\_office\\_locations.shtml](https://careerconnections.nj.gov/careerconnections/plan/foryou/disable/dvrs_field_office_locations.shtml).

Steps in Seeking DVRS Services:

[https://careerconnections.nj.gov/careerconnections/plan/foryou/disable/steps\\_in\\_the\\_dvrs\\_process.shtml](https://careerconnections.nj.gov/careerconnections/plan/foryou/disable/steps_in_the_dvrs_process.shtml).

Pre-ETS Student Referral Form:

[https://careerconnections.nj.gov/careerconnections/document/plan/Pre-ETS\\_Transition\\_Services\\_Student\\_Referral\\_Form.pdf](https://careerconnections.nj.gov/careerconnections/document/plan/Pre-ETS_Transition_Services_Student_Referral_Form.pdf).

### **Employment:**

Job Accommodation Network: <https://askjan.org/>.

*Employment Rights: Who has Them and Who Enforces Them* (U.S. Department of Labor, Office of Disability Employment Policy), <https://www.dol.gov/odep/pubs/fact/rights.htm>.

*Facts About the Americans with Disabilities Act* (U.S. Equal Employment Opportunity Commission), <https://www.eeoc.gov/eeoc/publications/fs-ada.cfm>.

American Job Centers: <https://www.careeronestop.org/Site/american-job-center.aspx>. The requirement that American Job Centers provide equal access to individuals with disabilities is discussed in *Promising Practices in Achieving Nondiscrimination and Equal Opportunity: A*



*Section 188 Disability Reference Guide* (U.S. Department of Labor 2019),  
<https://www.dol.gov/sites/dolgov/files/OASAM/legacy/files/Promising-Practices-in-Achieving-Nondiscrimination-and-Equal-Opportunity-A-Section-188-Disability-Reference-Guide.pdf>.

US Department of Labor Office of Disability Employment Policy: <https://www.dol.gov/odep/>.

National Collaborative on Workforce and Disability for Youth: <http://www.ncwd-youth.info/>.

Civil Rights Center of the US Department of Labor:  
<https://www.dol.gov/oasam/programs/crc/index.htm>.

*Fact Sheet – Disability Discrimination – Your Rights* (New Jersey Office of the Attorney General, Civil Rights), <https://www.nj.gov/oag/dcr/downloads/fact-Disability-Discrimination.pdf> (New Jersey Law Against Discrimination).

### **Job Sampling/Supported Employment (Students and Adults):**

Project HIRE, Arc of New Jersey: [https://www.arcnj.org/programs/project-hire/project\\_hire.html](https://www.arcnj.org/programs/project-hire/project_hire.html)  
(732-246-7605).

### **Legal Assistance with DDD, DVRS, or CBVI Services:**

Community Health Law Project: <http://www.chlp.org/home>, telephone: 973-275-1175.

Disability Rights New Jersey: <https://www.drnj.org/index.htm>, telephone: (800) 922-7233  
(voice) or (609) 633-7106 (TTY). (DRNJ Client Assistance Program pertains to DVRS and CBVI services; PADD Program may assist individuals with developmental disabilities.)

### **Mental Health/ Behavioral Challenges and Substance Abuse Needs:**

Division of Mental Health and Addiction Services Frequently Asked Questions:  
<https://www.nj.gov/humanservices/dmhas/home/faq/#1>.

*Directory of Mental Health Services* (New Jersey Department of Health, Division of Mental Health and Addiction Services 2017),  
[https://www.nj.gov/humanservices/dmhas/home/hotlines/MH\\_Dir\\_COMPLETE.pdf](https://www.nj.gov/humanservices/dmhas/home/hotlines/MH_Dir_COMPLETE.pdf).

Family Support Organizations by County: <https://www.nj.gov/dcf/families/support/support/#7>.

## **Postsecondary Education:**

College Admissions Tests -- Accommodations:

SAT: <https://collegereadiness.collegeboard.org/sat/register/special-circumstances/students-with-disabilities>.

ACT: <https://www.act.org/content/act/en/products-and-services/the-act/registration/accommodations/policy-for-accommodations-documentation.html>.

List of Accredited Colleges and Universities That Do Not Use ACT/SAT Scores to Admit Substantial Numbers of Students Into Bachelor-Degree Programs:

<https://www.fairtest.org/university/optional>.

*Postsecondary Education For Students With Disabilities - Handbook* (Disability Rights New Jersey 2018), <https://www.drnj.org/pdf/postsecondary%20ed%20revised%202018%20final%20version.pdf>.

*Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities* (U.S. Department of Education, Office for Civil Rights 2011), <https://www2.ed.gov/about/offices/list/ocr/transition.html>.

Frequently Asked Questions: Disability Discrimination:

<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/disability.html>.

*The ADA, Section 504 & Postsecondary Education* (PACER's National Parent Center on Transition and Employment © 2015), <https://www.pacer.org/transition/resource-library/publications/NPC-42.pdf>.

## **Special Education Rules and Forms:**

*The Right to Special Education in New Jersey* (Education Law Center 2008), [http://www.edlawcenter.org/assets/files/pdfs/publications/Rights\\_SpecialEducation\\_Guide%20OTL.pdf](http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide%20OTL.pdf).

*Parental Rights in Special Education* (NJDOE 2019), [https://www.nj.gov/education/specialed/form/prise/RevisedParentalRights\(PRISE\).pdf](https://www.nj.gov/education/specialed/form/prise/RevisedParentalRights(PRISE).pdf).

New Jersey Department of Education Model IEP Forms: available at

<https://www.nj.gov/education/specialed/form/>.

## **Transition Information:**

County Centers for Independent Living: <http://www.njsilc.org/>, telephone- State office: (609) 581-4500 (voice) or (609) 581-4555 (TTY). County CIL offices are listed online (may provide non-attorney advocates to assist with transition decisions, self-advocacy and independent living planning and/or attend IEP meetings).

*A Transition Guide to Postsecondary Education and Employment for Students and Youth with Disabilities* (US Department of Education, Office of Special Education and Rehabilitative Services 2017), <https://www2.ed.gov/about/offices/list/osers/transition/products/postsecondary-transition-guide-may-2017.pdf>.

*Family Guide to Transition Services in New Jersey* (Statewide Parent Advocacy Network 2018), <http://www.spanadvocacy.org/sites/default/files/files/Family%20Guide%20to%20Transition%20Services%200.pdf>.

*Planning the Transition from School to Adult Life: Considerations for Students with Autism Spectrum Disorder* (Autism New Jersey 3<sup>rd</sup> Edition 2019), available for download at <https://www.autismnj.org/information-services/publications/>.

*National Technical Assistance Center on Transition (NTACT) Case Studies* may be found at <https://www.transitionta.org/transitionplanning>, under the heading “Getting Started, Transition Planning Process.” A simple login procedure is required to view and download these and other free materials.

New Jersey Department of Education transition resources: <https://www.nj.gov/education/specialed/transition/> (IEP Development Resources section includes sample postsecondary goals and sample transition activities/strategies).

Federal Guidance Letter re: providing transition services in “least restrictive environment”: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/062212workplacelre2q2012.pdf>).

*Planning for Adult Life project*: <http://planningforadulthoodlife.org/welcome.html> (events and webinars).

Family Resource Network: <https://www.familyresourcenetwork.org/resources/> (live and archived webinars).

## Appendix B

### Table of Statutory and Regulatory Authorities

#### **Transition Planning**

Requirements for IEP in Place When Student Turns Age 14: N.J.A.C. 6A:14-3.7(e)(11); N.J.A.C. 6A:14-3.7(c)(11)(IEP team must consider need for consultation from DVRS and other agencies beginning at age 14).

Requirements for IEP in Place When Student Turns Age 16: 20 U.S.C.A. § 1414(d)(1)(A)(i)(VIII); 34 C.F.R. § 300.320(b); N.J.A.C. 6A:14-3.7(e)(12).

IEP to Include Liaison to Postsecondary Resources and Student's Preferences and Interests Even if Student Does Not Attend IEP Meeting: N.J.A.C. 6A:14-3.7(e)(13).

Definition of Transition Services: 20 U.S.C.A. § 1401(34); 34 C.F.R. § 300.43; N.J.A.C. 6A:14-3.7(e)(12)(i).

Failure of Agency other than Board of Education to Provide Transition Services or Attend IEP Meeting: 34 C.F.R. §300.324(c); N.J.A.C. 6A:14-3.7 (g), (h).

Annual IEP Goals: 20 U.S.C.A. § 1414(d)(1)(A)(i)(II-III); 34 C.F.R. §300.320 (a)(2-3); N.J.A.C. 6A:14-3.7(e)(2-3).

#### **Significance of Turning Age 18**

Rules Regarding Transfer of Rights at Age of Majority: N.J.A.C. 6A:14-2.3(m); N.J.A.C. 6A:14-3.7(e)(14) (IEP statement).

Definitions of "Parent" and "Adult Student": N.J.A.C. 6A:14-1.3.

#### **Graduation Issues**

Definitions of "student," "student age," and "age 21": N.J.A.C. 6A:14-1.3.

Termination of School District's Obligation to Students who Have Received Regular High School Diploma; Graduation with State Endorsed Diploma as Change in Placement: 34 C.F.R. §300.102(a)(3); N.J.A.C. 6A:14-4.11(b).

Special Education Students May Participate in Commencement Ceremonies with Graduating Class Even if Continuing in School ("Alicia's Law"): N.J.S.A. 18A:7C-5.2.

Statewide Assessments and Graduation of Students with Disabilities: N.J.A.C. 6A:14-4.10 – 4.11; N.J.S.A. 18A:7C-4 (State-endorsed diploma); N.J.A.C. 6A:8-5.1(c)(alternate requirements for State-endorsed diploma through IEP process).

“Stay-Put” Protection During Special Education Dispute: 20 U.S.C.A. §1415(j); 34 C.F.R. §300.518(a); N.J.A.C. 6A:14-2.7(u).

IEP team Must Consider Use of Assistive Technology: 20 U.S.C.A. §1414(d)(3)(B)(v); N.J.A.C. 6A:14-3.7(c)(10).

Summary of Performance: 20 U.S.C.A. §1414(c)(5)(B); 34 C.F.R. §300.305(e)(3); N.J.A.C. 6A:14-4.11(b)(4).

### **General Special Education Rules; Disputes regarding Transition Plans**

IDEA—Statement of Congressional Findings and Purposes: 20 U.S.C.A. §1400.

Definition of Individualized Education Program (“IEP”) team: N.J.A.C. 6A:14-1.3; N.J.A.C. 6A:14-2.3(k)(2).

Requirement to Provide Free and Appropriate Public Education (“FAPE”) in the Least Restrictive Environment (“LRE”): 20 U.S.C.A. §1412(a)(1)(A); 20 U.S.C.A. §1412(a)(5); N.J.A.C. 6A:14-1.1(b).

Denial of FAPE in matters alleging procedural violations: 20 U.S.C.A. §1415(f)(3)(E); N.J.A.C. 6A:14-2.7(k).

Due Process Available to Students over Age 21 Receiving Compensatory or Related Services: N.J.A.C. 6A:14-2.7(a).

Reimbursement for Private School Tuition: 20 U.S.C.A. §1412(a)(10)(C); N.J.A.C. 6A:14-2.10.

### **Qualification for DDD Services**

Definition of “developmental disability” and eligibility rules: N.J.S.A. 30:6D-25(b); N.J.A.C. 10:46.

### **Students with Visual Impairments - CBVI Regulations and Relevant IDEA Regulations**

Vocational Rehabilitation Services Program of CBVI: N.J.A.C. 10:95

- Purpose and Scope: N.J.A.C. 10:95-1.1.
- CBVI Transition services: N.J.A.C. 10:95-10.2(a-d).
- CBVI Regulation re: Last Year of Formal Education: N.J.A.C. 10:95-10.2(e)(note that the regulation refers to the Joseph Kohn Rehabilitation Center; the name has been changed to the Joseph Kohn Training Center).
- Replacement Equipment in Last Year of High School: N.J.A.C. 10:95-9.2.

- Eligibility for CBVI Vocational Rehabilitation Services: N.J.A.C. 10:95-2.2.
- CBVI Operated Vocational Rehabilitation Services: N.J.A.C. 10:95-8.1 – 8.8.

Business Enterprise Program of CBVI: N.J.A.C. 10:97.

Educational Services of CBVI: N.J.A.C. 10:92.

IDEA “Related Services” Definition includes Orientation and Mobility Services: 34 C.F.R. §300.34(a), (c)(7).

IDEA “Special Education” Definition includes Travel Training: 34 C.F.R. §300.39(a)(2)(ii), (b)(4).

### **Other Laws Protecting Individuals with Disabilities**

Section 504 of the Rehabilitation Act of 1973: 29 U.S.C.A. §794.

Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008: 42 U.S.C.A. §§ 12101-12213, 47 U.S.C.A. §§ 225 and 611.

Workplace Innovation and Opportunity Act: 29 U.S.C.A. §§3101 - 3361; Nondiscrimination regulations: 29 C.F.R. Part 38.

New Jersey Law Against Discrimination: N.J.S.A. §§ 10:5-1 – 10:5-49.

**Appendix C**  
**Selected Case Summaries**

**Third Circuit Cases: Transition and Timing of Graduation:**

Rodrigues v. Fort Lee Bd. of Educ., 458 Fed. App'x. 124 (3d Cir. 2011) (per curium):

Parent of a student with cerebral palsy requested two years of compensatory education at a residential facility on grounds that student was denied FAPE during grades 11 and 12. Parent claimed that the 11<sup>th</sup> grade IEP and certain parts of the 12<sup>th</sup> grade IEP lacked objective, measurable goals and that the IEPs did not contain adequate descriptions of transition services to bridge the gap between high school and postsecondary activities.

The school district admitted error as to the lack of objective, measurable goals but the court found this a “procedural error” and found no denial of FAPE where the student was “mainstreamed,” had high grades, passed the New Jersey High School Proficiency Assessment, and had strong performance at a private summer school. Regarding the claim of inadequate description of transition services, the court stated that even if the description was “imperfect,” a failure in this regard is a procedural violation and the student in this case was not deprived of any educational opportunity. (The student’s IEPs set forth the academic requirements to attend college, the senior year IEP had a detailed transition-related “checklist,” and the Board provided the family with information about other agencies further assisting in transition).

Rogers by Rogers v. Hempfield School Dist., 2018 WL 4635779 (E.D. Pa. Sept. 27, 2018):

A student with autism attended his neighborhood high school. He had the requisite credits to graduate at the end of 12<sup>th</sup> grade but remained enrolled in the district for transition-related activities, attending a School to Work program that included job training and job shadowing in a variety of industries as well as instruction in other job-related tasks (e.g., using public transportation, work behavior, and resume writing) and independent living skills (preparing meals, doing laundry, budgeting and banking). The IEP for his 13<sup>th</sup> year was revised to include a Promoting Academic Success program at a community college, an 8-week program in a college setting which influenced his post-secondary path. At the end of the student’s 13<sup>th</sup> year, the parents told the district that the student would be attending a Career and Life Studies program at a university the following school year. The school district proposed keeping the student enrolled in special education as he had not yet met his goals in banking and anxiety management, offering to deliver instruction in these areas on the university campus. The parents rejected this proposal and sought to have the district fund the university program. During the following year, the district did in fact arrange to provide services on the university

campus but the parents and student frequently cancelled sessions. The student had no difficulty transitioning to his postsecondary program, making friends, living in a dorm, securing employment as a paid stage manager, and advocating for himself with professors. The court, noting that transition requirements in the Third Circuit have been described as “undemanding,” found that the school district met its transition-related obligations to the student in this case. Citing K.D. v. Downingtown Area School Dist., 904 F. 3d 248 (3<sup>rd</sup> Cir. 2018) the court explained in a footnote that the Supreme Court’s decision in Endrew F., cited below, did not significantly change the legal standard for FAPE in the Third Circuit but rather parallels the Third Circuit’s “meaningful educational benefit” standard.

K.M. and T.M. o/b/o R.M. v. Keyport Board of Educ., 2015 WL 9264921 (N.J. Adm. Dec. 9, 2015), *order confirmed*, 2018 WL 8139275 (Sup. Ct., Law Div. June 25, 2018):

A student was placed out-of-district in a private school for students with disabilities at the beginning of her junior year pursuant to a settlement agreement. The settlement agreement provided that the student would remain in this out-of-district placement until graduation at the end of the next school year. At an IEP meeting at the end of May of the student’s senior year, the student’s case manager presented the parent with a Notice of Graduation and Summary of Performance, and the parents expressed that the student was not ready for graduation and would not be accepting a diploma. The parents requested mediation before graduation and requested that this be “converted” to due process subsequent to graduation (also filing a separate due process petition at that time). The parents requested that the student attend Extended School Year at the private school or be placed in a transition program. The student participated in the graduation ceremony but refused to physically accept a printed paper diploma.

The court held that the student was not entitled to additional services where the parents (who were quite familiar with contesting IEPs) had failed to reject the IEP entered into at the end of the student’s junior year. Their last minute attempt to claim that the student was denied FAPE was considered akin to “Monday morning quarterbacking,” in violation of the principle that IEPs must be judged prospectively. The facts in the case indicated that the student achieved proficient scores on both the mathematics and language arts components of the High School Proficiency Assessment. The student’s refusal to accept a paper diploma did not negate the student’s successful completion of high school; the student was treated as having graduated with a regular high school diploma, terminating the school district’s obligation to her.

K.M. cites Wexler v. Westfield Board of Educ., 784 F.2d 176 (3d Cir. 1986), *cert denied*, 479 U.S. 825 (1986) for the proposition that IDEA does not place an “absolute duty” on school districts to provide FAPE until age 21.



L.M., by and through her parents, M.M. and R.M., and M.M. and R.M. Individually v. Downingtown Area School Dist., 2015 WL 1725091 (E.D. Pa. April 15, 2015):

A student with a variety of medical conditions/side effects from medications (including juvenile rheumatoid arthritis, brain injury due to seizures, asthma and allergies, a compromised immune system, and compromised bone strength) attended a private school beginning after 4th grade and through 8th grade pursuant to settlement agreements. The public school district proposed bringing the student back to the district for 9<sup>th</sup> grade, but the parents rejected this placement, enrolled the student for 9<sup>th</sup> grade at the private school, and sought reimbursement for her tuition and for an IEE they obtained, claiming that the school district failed to offer FAPE. Among other arguments, the parents pointed to the IEP's failure to include appropriate measurable postsecondary goals and transition services. They claimed that the "boilerplate" transition plan consisted of "information from an informal conversation" with the student and "one question on a parent input form," which were not appropriate transition assessments upon which postsecondary goals could be based. (The student was age 17 and in 9<sup>th</sup> grade at the time of the due process hearing.)

The court rejected the parents' claim regarding the transition plan, noting that the Third Circuit had "affirmed one district court's conclusion that a bare transition plan in a child's IEP did not deny the student FAPE" and that "courts in the Third Circuit have emphasized that these requirements are undemanding and are focused more on exposure to opportunities than a promise of a particular outcome." The school district in this case was held to have satisfied its obligations where the IEP noted the student's enjoyment of babysitting and goal of owning a babysitting business as well as her uncertainty about attending postsecondary school (in addition to the mother's hope that she would attend college or have a full time job working with children), provided that the student would meet with a guidance counselor for the purpose of aligning program planning with postsecondary education goals and would participate in an assessment to pinpoint vocational interests, and contained information about agencies that could further assist with postsecondary transition.

D.C. o/b/o T.C. and D.C. v. Mount Olive Twp. Board of Educ., 2012 WL 3879381 (N.J. Adm. June 15, 2012), *aff'd*, 2014 WL 1293534 (D.N.J. March 31, 2014), *appeal dismissed* (3d Cir. Sep 18, 2014):

The mother of a student with "high-functioning autism" challenged his high school graduation (at age 19), claiming that the school district "ha[d] not made any attempt to prepare T.C. for post-graduation life, in violation of its requirements under state and federal law." The facts in the case indicated that the student, who had repeated third grade and been homeschooled between fourth and seventh grades, was then enrolled in public school with the aim of transitioning him into a general education curriculum. By 12<sup>th</sup> grade, the student spent over 80% of his school day in general education; he was, however, exempted from taking the High

School Proficiency Test. The student had expressed an interest in attending college and was interested in working in computer animation or theater arts. The student had phobias, anxiety and sensitivity to loud noises in addition to demonstrating aggression toward another student; an incident of aggression resulted in his suspension during 12<sup>th</sup> grade.

While all parties apparently anticipated over time that the student would graduate high school in four years, the mother during the spring of 12<sup>th</sup> grade sought an order preventing his graduation that year in addition to requesting a transition meeting with a DVRS representative, a transition plan, counseling services, functional behavior and sensory integration assessments, and compensatory education in an out-of-district placement until age 21. The court ruled in favor of the school district, finding that the student had met the requirements necessary for graduation. On the issue of inadequate transition planning, the mother asserted that the district had provided an “almost non-existent” transition plan, failing to provide “even the minimal, boiler-plate transition services” to ensure his readiness for transition. She further pointed to her son’s failure to actually meet any of his stated goals – going to college, working in computer animation, living independently – as revealing the inadequacy of the district’s transition planning. These arguments were rejected where the court found that (1) the district had provided linkages to the DDD and had put the student in touch with DVRS, (2) the final and previous IEP had “stressed that it was the *parent’s* responsibility to schedule meetings with vocational authorities and other entities like the Center for Academic Support and Enrichment Horizons,” (3) there were transition services listed in the final IEP, each assigned to a specific person or agency, (4) the junior and senior year transition sections were not identical -- but students *may* validly maintain transition plans and goals from one year to another, (5) whether a student actually meets his goals is not dispositive, and (6) the parent failed to persuasively show that the student’s “not having applied to various programs equates to the [school district’s] failure under the IDEA.”

The district court’s discussion of the transition planning issue starts with the proposition that while the Third Circuit has not “defined what amount of transition planning is required in an IEP to ensure a FAPE,” the Circuit (in Rodrigues, above) has suggested that an inadequate description of transition services is a procedural violation of IDEA, and “[t]he floor set by the IDEA for adequate transition services appears to be low.” The ALJ opinion concludes with a statement that: “While T.C. might not have attained college entry at this time as hoped for by the parent, I am persuaded that T.C. is ready to enter vocational training to improve daily living skills begun in the Mt. Olive public school. Vocational training can be provided by the DDD and the DVRS.” (Note that the district court opinion distinguishes the Dracut case, a Massachusetts decision cited below, as a case in which the school district “had completely failed to conduct assessments prior to certain IEPs.”)

Although the parent and student appealed the district court decision to the Third Circuit, the appeal was dismissed when the parties entered into a settlement agreement.

High v. Exeter Twp. School Dist., 2010 WL 363832 (E.D. Pa. Feb. 1, 2010):

Court rejects claim that IEP was deficient because it failed to state how the student would meet her transition goal of attending college, stating that “there is no requirement for a transition plan to dictate IEP goals” and that the standard for progress monitoring of the IEP is “not the standard for a transition plan. Transition plan statutory requirements contain no progress monitoring requirement. An IEP must include a method to measure a child’s progress; however, a transition plan must only be updated annually and include measurable goals and corresponding services.” While the district “helped [the student] realize she wanted to attend college, the District was not required to ensure she was successful in fulfilling this desire.”

#### **Transition-Related Cases outside Third Circuit:**

C.D. ex rel. M.D. v. Natick Public School Dist., 924 F. 3d 621 (1<sup>st</sup> Cir. 2019):

IDEA “does not require a stand-alone transition plan” (citing Lessard v. Wilton Lyndeborough Coop. School Dist., 518 F. 3d 18 (1<sup>st</sup> Cir. 2008)). Note that 20 U.S.C.A. § 1414(d)(1)(A)(ii) states, as a rule of construction, that the IEP team is not required “to include information under 1 component of a child’s IEP that is already contained under another component of such IEP.”

Lessard v. Wilton Lyndeborough Coop. School Dist., 518 F. 3d 18 (1<sup>st</sup> Cir. 2008):

Court rejects parents’ argument that the reference to “outcome-oriented process” in the definition of “transition services” (enacted as part of the 1997 amendments to IDEA) supplants general Supreme Court interpretation of FAPE and requires that a student “actually achieves substantial progress” toward the desired outcome. Note that the current definition of “transition services” uses the phrase “results-oriented process.”

Dracut School Committee v. Bureau of Special Education Appeals of the Massachusetts Dept. of Elementary and Secondary Educ., P.A. and C.A., 737 F. Supp. 2d 35 (D. Mass. 2010):

Massachusetts case in which school district did not conduct any transition assessments for two IEPs and failed to utilize parents’ transition assessments. Court states that a procedural violation in the area of transition rises to the level of a denial of FAPE “when a school fails to conduct proper assessments and then provides inadequate services.”

Forest Grove School Dist. v. Student, 2014 WL 2592654 (D. Oregon 2014), *aff'd*, 665 Fed. Appx. 612 (9<sup>th</sup> Cir. Dec. 5, 2016):

District court orders compensatory transition services where IEP in place for the period during which the student turned age 16 contained no transition plan, stating that a denial of FAPE necessarily occurs in these circumstances; Circuit Court opinion does not address this point but other language in Circuit Court opinion appears to weaken this holding.

### **Other Relevant Cases:**

#### **Free and Appropriate Public Education:**

Andrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1, 137 S. Ct. 988 (2017) – IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

Board of Education of Hendrick Hudson Central School Dist. v. Rowley, 458 U.S. 176 (1982) – The “‘basic floor of opportunity’ provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child....if the child is being educated in the regular classrooms of the public education system, [the IEP] should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”

#### **Compensatory Education:**

##### Services after Age 21

Ferren C. v. Sch. Dist. of Philadelphia, 612 F.3d 712 (3d Cir. 2010) – A school district established a \$200,000 trust fund to provide compensatory education to a student after her 21<sup>st</sup> birthday. The student’s parents lacked the expertise to devise a compensatory education program for her and sought to keep her enrolled in the private school she attended up until age 21. The court ruled that compensatory education for students over age 21 is not limited to monetary relief, approving an equitable remedy under which the school district would not only pay the student’s tuition from the trust fund but also continue to provide IEPs and annual evaluations and serve as the student’s local educational agency while she attended the private school.

Lester H. by Octavia P. v. Gilhool, 916 F.2d 865 (3d Cir. 1990), *cert denied sub nom. Chester Upland Sch. Dist. v. Lester H.*, 499 U.S. 923 (1991) -- Where a student with severe cognitive and behavioral disabilities (age 12 at the time of the court decision) was deprived FAPE for 2 ½ years, having spent significant time in home instruction, it was appropriate to award 2 ½ years of compensatory education beyond age 21. The court rejected the school district's contention that the student's future educational needs could not yet be determined, stating that the student's "injury certainly could be, and was, ascertained" and that the award offset the period of FAPE deprivation.

#### Compensatory Education Fund

D.E. v. Cent. Dauphin Sch. Dist., 765 F.3d 260 (3d Cir. 2014) – A hearing officer's award of compensatory education contemplated that the parents would request reimbursement for services, while also allowing the parties to agree that the school district would create a fund, in a set amount, for the parents to draw upon to pay for such services. The court held that the school district could not be allowed to avoid liability by refusing to agree to create a fund. "[T]he availability of IDEA remedies should not depend upon whether a student or his parents have the financial means to front the costs of those remedies."

#### Use of Compensatory Education for College Expenses

Stapleton v. Penns Valley Area School Dist., 2017 WL 6336611 (M.D. Pa. 2017) – A student was awarded 990 hours of compensatory education for the school district's failure to provide FAPE for three school years; the student's parents were supposed to apply the award by selecting various instructional services for the student and requesting the school district to pay for such services. The student graduated 3 years after the award was made without the having used any of the hours of compensatory education and requested to use the award to cover part of his college tuition as he pursued a degree in Forestry Ecosystem Management. The court denied the student's request, reasoning that while compensatory education may extend beyond age 21, it should reflect educational benefits that "would have accrued from special education services the school district should have supplied in the first place." Assuming that college tuition may be allowed as a form of compensatory education, the court stated that "the disbursement of those funds under the IDEA for college courses and attendant expenses must align with identified educational services the student did not receive from the school district for the period of time he or she was deprived a FAPE." The student and parents in this case failed to show that the requested reimbursement for the costs of a college degree would compensate for educational services the student was denied in secondary school.

J.H. v. Plainfield Board of Educ., 2017 WL 1488741 (N.J. Adm. April 13, 2017) -- Noting that compensatory education may include college tuition where the credits obtained are used toward acquisition of a high school diploma.

Letter to Riffe! (Office of Special Education and Rehabilitative Services Aug. 22, 2000), available at <https://www2.ed.gov/policy/speced/guid/idea/letters/revpolicy/tpfape.html> (additional explanation of March 20, 2000 letter) – While compensatory education can be provided to a student who graduated high school with a regular diploma, IDEA “does not authorize a school district to provide a student with compensatory education, through the provision of instruction or services, at the postsecondary level.” Services at the junior college level could only be provided if such services would also be considered elementary/secondary school education under state law.

#### Statute of Limitations

G.L. v. Ligonier Valley Sch. Dist. Auth., 802 F.3d 601 (3d Cir. 2015) – Under IDEA, the general statute of limitations rule is that parents have two years from the date they knew or should have known of a school district’s failure to provide FAPE to request a due process hearing. If the school district is found to have failed to provide FAPE, compensatory education can be awarded for the entire time period of the school district’s failure, excluding only “the time reasonably required for the school district to rectify the problem.” Notwithstanding the reference in 20 U.S.C.A. §1415(b)(6)(B) to violations dating back two years, there is no cap on the time period with respect to which a deprivation of FAPE can be remedied through compensatory education.

#### Remedy Founded on Denial of FAPE

C.W. ex rel. Louise W. v. The Rose Tree Media Sch. Dist., 395 F. App'x 824 (3d Cir. 2010) – Where school district’s IEP offered FAPE, student was not entitled to compensatory education or reimbursement of private school tuition notwithstanding extended delay in processing request for due process hearing. “The purpose of compensatory education is not to punish school districts for failing to follow the established procedures for providing a free and appropriate public education, but to compensate students with disabilities who have not received an appropriate education.”

### Impact of Move Out of District or State

D.F. v. Collingswood Borough Board of Educ., 694 F. 3d 488 (3d. Cir. 2012) -- Court holds that “a claim for compensatory education is not rendered moot by an out-of-district move, even if that move takes the child out of state.” If the obligation to provide compensatory education terminated with a student’s move out of district, such a rule would allow a school district to stop providing services to a student “with the underlying motive of inducing this student to move from the district...”. Where a student has moved out of a school district, compensatory education can still be provided by the original school district by, for example, establishing a fund to be spent on the child’s education, having the school district pay the student’s new district, or having the original district contract with a local provider in the student’s new home to provide tutoring, counseling, or other support services.

## Appendix D

**NOTICE OF GRADUATION** (from NJDOE Model Forms, available at <https://www.nj.gov/education/specialed/form/>)

**Date**

**Parent's Name**

**Adult Student's Name**

**Address**

**City, State ZIP Code**

Dear (parent's/adult student's name):

The purpose of this letter is to notify you that (you/child's name)(have/has) met the requirements of (your/his/her) individualized education program and, barring any unforeseen circumstances, will graduate at the conclusion of the (date) school year. This determination was made at the meeting of the IEP team on (date), and was based on a review of work samples, teacher reports, grades, *etc.*

The following is a description of any other options discussed (when other options were considered) and the reasons why they were rejected:

You have a right to review and consider this decision. However, the determination that (you/your child) will graduate will become effective 15 days after you receive this notice unless you initiate mediation or a due process hearing to dispute this decision.

As the parent of a student, or as an adult student with disabilities, you have rights regarding the identification, evaluation, classification, the development of an IEP, placement, and the provision of a free, appropriate public education under the New Jersey Administrative Code for Special Education, N.J.A.C. 6A:14. A description of these rights, which are called procedural safeguards, is contained in the document, *Parental Rights in Special Education (PRISE)*. This document is published by the New Jersey Department of Education.

A copy of *PRISE* is provided to you one time per year and upon referral for an initial evaluation, when you request a due process hearing or complaint investigation and when a disciplinary action that constitutes a change of placement is initiated. In addition you may request a copy by contacting (name of office or district personnel) at (phone).

For help in understanding your rights, you may contact any of the following:

(name of school district representative)

(phone)



Statewide Parent Advocacy Network (SPAN) at 1(800) 654-7726

Disability Rights New Jersey at 1(800) 922-7233

The New Jersey Department of Education through the (name of) County Office, (name of county supervisor of child study), (phone)

If you have any questions regarding this notice, please contact me.

Sincerely,  
**(Name)**  
**(Position)**  
**(Phone Number)**

**[District Name] Public Schools**

**SUMMARY OF PERFORMANCE**

(from NJDOE Model Forms, available at <https://www.nj.gov/education/specialed/form/>)

Date: \_\_\_\_\_

Student Name: \_\_\_\_\_ Birthdate: \_\_\_\_\_

Student's Eligibility Category: \_\_\_\_\_ Date of Graduation/Exit: \_\_\_\_\_

**Student's Postsecondary Goals**

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**Present Levels of Academic Achievement and Functional Performance** (Can include, but is not limited to: How the student's disability has affected his or her involvement and progress in the general education curriculum; other educational needs that result from the student's disability; academic/functional levels and other evaluative information; strengths, interests and preferences; and, effective supports and accommodations used during high school.)

The student has been determined eligible to receive services from the following agencies: (check all that apply)

- NJDVRS  
  NJCBVI  
  NJ Transit Access Link  
  County Paratransit System  
  NJDYFS  
  Social Security  
 NJDDD The student is on the following DDD waiting lists:  Residential  
  Day Services Only  
  Other \_\_\_\_\_  
 Community Mental Health Agency  
  Center for Independent Living  
  Other \_\_\_\_\_

**Recommendations to assist the student in meeting postsecondary goals** in the areas of Postsecondary Education, Employment, Independent Living, and Community Participation.

### Recommended Resources

(Check all that apply)

<u>Agency</u>	<u>Phone</u>	<u>Web Site</u>
<input type="checkbox"/> NJ Division of Disability Services For Information and Referral Assistance	1-888-285-3036	<a href="http://www.state.nj.us/humanservices/dds">www.state.nj.us/humanservices/dds</a>
<input type="checkbox"/> NJ Division of Vocational Rehab. Services	609-292-5987	<a href="http://lwd.dol.state.nj.us/labor/dvrs/disabled/Transition.html">http://lwd.dol.state.nj.us/labor/dvrs/disabled/Transition.html</a>
<input type="checkbox"/> NJ Transit Access Link	1-800-955-2321	<a href="http://www.njtransit.com/tm/tm_servlet.srv?hdnPageAction=AccessLinkTo">www.njtransit.com/tm/tm_servlet.srv?hdnPageAction=AccessLinkTo</a>
<input type="checkbox"/> County Paratransit System		<a href="http://www.njtransit.com/tm/tm_servlet.srv?hdnPageAction=ParaTransitTo">www.njtransit.com/tm/tm_servlet.srv?hdnPageAction=ParaTransitTo</a>
<input type="checkbox"/> NJ Comm. for the Blind and Visually Impaired	973-648-3333	<a href="http://www.state.nj.us/humanservices/cbvi/home">www.state.nj.us/humanservices/cbvi/home</a>
<input type="checkbox"/> The Family Support Center	1-800-FSC-NJ10	<a href="http://www.fscnj.org">http://www.fscnj.org</a>
<input type="checkbox"/> NJ Division of Youth and Family Services	1-800-331-3937	<a href="http://www.nj.us/dcf/divisions/dyfs">www.nj.us/dcf/divisions/dyfs</a>
<input type="checkbox"/> Community Mental Health Agency	1-800-382-6717	<a href="http://www.state.nj.us/humanservices/dmhs/news/publications/mhs/index.html">www.state.nj.us/humanservices/dmhs/news/publications/mhs/index.html</a>
<input type="checkbox"/> Center for Independent Living	609-581-4500	<a href="http://www.njsilc.org">www.njsilc.org</a>
<input type="checkbox"/> Social Security Administration	1-800-772-1213	<a href="http://www.ssa.gov/disability">www.ssa.gov/disability</a>
<input type="checkbox"/> NJ Division of Developmental Disabilities	1-800-832-9173	<a href="http://www.state.nj.us/humanservices/ddd/home/index.html">www.state.nj.us/humanservices/ddd/home/index.html</a>

I have reviewed this Summary of Performance and have received a copy.

Student Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix E

### **Modified Excerpt from National Technical Assistance Center on Transition (NTACT) Case Studies**

(included with permission of NTACT, <https://transitionta.org/>)

#### **Fictional Student (Chris) with Emotional Disturbance**

Chris is a 19-year-old senior identified with emotional disturbance. He is on track for a regular diploma, but due to absences and early high school course failures is taking five years to complete his diploma. Based on an informal interview with his Student Supports teacher, Chris said he wants to get his diploma. He talked about liking that he will graduate with a credential for Automotive Systems Technology by completing the Career and Technical Education courses. Chris is in general education settings for most of his courses. Chris is in one class each semester for study skills and behavioral strategy support. Chris is a friendly, outgoing student and works hard in classes that interest him. Academically, he has maintained a C average since his sophomore year. His emotions can “get the best of him”, according to his mother’s pre-meeting phone call with his teacher and this caused him to miss school early in high school, because he was anxious about not passing.

Chris also has a moderate hearing loss that requires him to wear a hearing aid. Chris told his teacher that he can “get by” with lip reading and learned some basic sign language in preschool and elementary school. When he wears his hearing aid, he is able to attend to the speech of others in the classroom and community with minimal effort. He does not mind wearing his hearing aids, but he sometimes forgets to take care of them as directed by the audiologist and the speech language therapist, according to his mother.

She also recounted that during elementary school, Chris exhibited behavioral outbursts including yelling and cursing loudly when things did not go his way in the classroom and at school. At the age of 15, he was sure that he would drop out of high school on his sixteenth birthday because he didn’t like school and wanted to earn money like his older relatives. By tenth grade, Chris’s mother and uncle met with the school’s counselor and his current Student Supports teacher and developed a behavior plan that provided him with some strategies that seem to have worked well for him since that time. Chris also identified courses that included career-related courses with work experiences. These accommodations to Chris’s schedule have resulted in his five-year high school plan; however, he and his family report that it will be worth it for him to graduate. Chris’s mother meets each semester with his Student Supports and Career and Technical education (CTE) teacher.

Chris has worked part-time with his uncle at his welding shop and expressed an interest in

working in a similar environment after high school. He has also learned from the vocational rehabilitation (VR) counselor for the high school that if he can take a few more courses beyond high school he can earn an advanced certification in a second area and be more likely to own his own business or earn more money. The VR counselor submitted notes to Chris's Student Supports teacher that documented she has connected him with Ivy Technical Community College (ITCC) for a tour and explanation of program options. His CTE teacher provided documentation on a pre-IEP update form that she had set up a job-shadowing experience at an auto mechanic shop for the current semester. She also reported that Chris' grade point average in his credentialing courses is 3.7. At ITCC, Chris said he was informed about disability support services. He wants to be sure he meets with the high school or VR counselor, so that he has the documents he needs to get support if he goes to a new employer or school. He explained that the college counselor had told him that he wouldn't automatically get extended time or a place to go "decompress" like he had in high school, unless he had "proof" he needed that. Chris's mother reported that she's observed him to be a bit anxious, as he anticipates finishing high school.

Based on the E-JAM (Environmental Job Assessment Measure) results, Chris demonstrates a preference for noisy and indoor work environments where he can be active and implement hands on labor. At his uncle's welding business, he enjoys working with others, doing manual labor, and listening to loud music while working. He exhibits strengths in the area of mechanical work. Career assessments indicate that he is likely to be a serious, dedicated employee. American Institutes for Research (AIR) Self-Determination Assessments evidence student/parent/teacher scoring display discrepancy between student perceptions and score and parent score. Chris rated himself significantly higher than did teacher and parent. At home, he fixes appliances around the house. One time in the past year, Chris received criticism from his uncle because he was not consistently wearing appropriate safety gear. Chris did not accept the feedback well; he walked out of the shop and went home for the day.

Outside of school and his part-time job, Chris enjoys gaming. He has never played sports, and does not have an interest in them other than watching stock car races on television. For the past few years, he and his friends have worked to fix up a car they bought from the junk yard. His uncle learned that one of the boys had entered a few local races on the weekends to win cash prizes. Chris has not raced the car but fixed the body work. His hobby has prepared him with valuable vocational skills related to welding and automotive, but these races are illegal. The local police have begun to pay more attention to these events. Chris does not express any concern that he will be caught participating in the races, because he is not racing and knows his friends wouldn't do anything to get him in trouble. On the transition survey, Chris's uncle and mother stated that they are concerned that he will get into trouble with the law.

## **Appropriate Measurable Postsecondary Goals –Examples:**

### **Education and Training:**

- After graduation from high school, Chris will enroll in the Industrial Technology program at Ivy Technical Community College to obtain a welding certification.

### **Employment:**

- After high school, Chris will work part-time for an auto-body or auto mechanic, while taking classes.
- After completing courses for certification from ITCC, Chris will obtain a small business license and contract out his services as a welder and will eventually be a shared or full partner in an automotive body shop.

### **Independent Living:**

- After graduation, Chris will follow the laws of his community to ensure his and others' safety.
- After graduation, Chris will maintain his hearing aid equipment by attending annual check-ups with an audiologist.
- After graduation, Chris will participate in counseling or other practices that provide him with resources to respond productively in stressful situations.

## **Transition Services – Examples:**

### **Services Related to Education and Training**

- Instruction related to on the job safety (VR counselor for school, CTE teacher, end of third quarter)
- Obtain documentation requirements for disability services at ITCC (Chris, VR counselor, by end of fourth quarter)
- Complete referral paperwork to determine eligibility for VR services (currently receiving guidance as “potentially eligible”) – Chris, VR counselor for school

### **Services Related to Employment**

- Job-shadowing experience related to auto mechanics (CTE teacher, VR counselor, by fourth quarter)
- The summer after graduation from high school, Chris will attend BizCamp, a two-week, intensive summer program for students who are interested in entrepreneurship sponsored by the National Foundation for Teaching Entrepreneurship (responsibility of Chris, mother, CTE teacher, special education teacher – by end of fourth quarter)

### **Services Related to Independent Living**

- Mentor program through local YMCA/police department (special education teacher, end of first semester)
- Problem-solving anger-management strategy instruction (special education teacher, school counselor by end of second quarter)
- Audiology for hearing aid maintenance (Chris and parent by end of the

year)

- Referral to Medicaid for augmentative communication device coverage (i.e., hearing aid) (Case manager and parent by end of year)

#### Courses of Study Reasonably Enabling Student to Meet Postsecondary Goals

- Courses are listed identifying what Chris will take his final semesters of high school. These courses are:
  1. English IV (1 Credit)
  2. Mathematics III (1 credit)
  3. Mathematics IV (1 credit)
  4. Science (1 Credit)
  5. Demonstration of proficiency in state testing of computer skills
  6. Career/Technical – Automotive Services III (1 Credit)
  7. Electives - Manufacturing I & Core and Sustainable Construction (2 Credits)

#### Annual IEP Goals Related to Transition Services Needs- Examples:

##### Education/Training Annual Goals

- Given explicit instruction on entrepreneurial traits and behaviors, guided practice, and self-assessment, Chris will list 4 out of 5 personal traits/behaviors associated with successful entrepreneurial performance prior to the end of the first school quarter for 5 consecutive trials.
- Given small group instruction on work safety skills, a task analysis, and self-monitoring sheet, Chris will demonstrate appropriate safety skills in automotive services class with 100% accuracy for 10 out of 10 trials during the duration of the IEP.

##### Employment Annual Goal

- Given a whole task instruction and a task analysis for repairing a corner panel to a car, Chris will demonstrate the steps in the task analysis with 80% accuracy and no more than one verbal prompt weekly by the end of the first school semester.
- Given direct instruction for completing a small business license application, guided practice, and personal information, Chris will complete an application with 100% accuracy by the end of the 1<sup>st</sup> school semester.

##### Independent Living Annual Goal

- Given computer/video enacted role-plays of legal and illegal activities, Chris will categorize activities with 80% accuracy by March of 2019.
- Given role play scenarios and problem-solving strategy, Chris will accurately apply each of the strategy components on 4 of 5 trials, presented across one month, as well as generalize to natural settings by the end of the school year.

**“Non-Examples” Related to Chris: Samples of Transition Plan Language *Failing* to Meet Legal Requirements**

**Postsecondary Goals:**

“Chris will apply to the industry certificate program at CPCC” – this is measurable but is more akin to a transition service which would occur during high school.

“Chris has expressed interest in the automotive repair industry” – faulty in containing no measurable outcome; not clear that this will occur after high school.

“Chris wants a new less visible hearing aid” – not a measurable postsecondary goal.

**Transition Services:**

“Intensive Reading Instruction, two trips to adult vocational day placement, swimming classes at the local YMCA, Drivers Education” -- none of these services are individualized to Chris’ postsecondary goals and there is no indication of who is responsible or by when the service will occur

“Complete the Brigance Transition Skills Inventory to identify areas of instruction in daily living skills” – this is not an appropriate assessment for Chris and responsible parties and timeframes are not indicated.

“The IEP lists the following courses as Chris’s course of study: Functional Reading (1 Credit), Problem Solving in the Workplace (1 Credit), Functional Math (1 Credit)” – defective in that these courses do not reflect multi-year coursework that will help Chris meet his postsecondary goals; student needs courses tailored to goal of obtaining welding certificate at a technical college leading to full-time employment.

**Annual IEP Goals Related to Transition:**

“Chris will demonstrate appropriate safety skills in class” –deficient in lacking condition, measurable behavior, criteria, and timeframe.

“Chris will meet with the resource officer at the school to discuss the difference between illegal and legal activities” – fails requirement for annual goal due to lacking condition, measurable behavior, criteria, and timeframe; suggests an activity rather than learning a specific skill.