

SPECIAL POINTS OF INTEREST:

- Oral Arguments were held at the PA Supreme Court on whether entitlement to services extends to age 22
- Follow timelines for transfer students to ensure continuity of services
- A diagnosis of ADHD and MH issues does not automatically mean behavior is a manifestation of the child's disability.

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Update on Students Aging Out of Services

The PA Supreme Court recently held oral argument in the case about the age-out rule for special education students.

The lawsuit stems from a federal class action claim against PDE alleging that the policy of aging out of school services the year in which the student turns 21 prematurely ends special education services for

some students. PDE settled that lawsuit by agreeing to change its policy to allow students to receive services up until their 22nd birthday.

PSBA and several schools filed a lawsuit against PDE to block that rule from taking effect, arguing that the settlement was a new regulation that required a formal rule making process. The

Commonwealth Court agreed with PSBA and found the settlement and new policy to be unenforceable.

PDE subsequently appealed the ruling to the PA Supreme Court, thereby staying (or keeping in effect) the age 22 rule. With oral argument now concluded, the Court is required to issue a decision within 90 days.

Transfer Students

Students with disabilities frequently move between school districts and states, and IDEA ensures that their services are not disrupted during these transitions. When a student with an existing Individualized Education Program (IEP) transfers, the receiving school district must act promptly to maintain continuity of services while still meeting its obligation to evaluate and serve the student appropriately. Requirements vary depending on whether the transfer is within the same state or from another state.

Review Requirements for Transfer Students on p. 3-4

CASE LAW UPDATE

S.M. v. Freehold Regional S.D.

3rd Circuit (Unpublished)

Transportation

FACTS: B.M. is a young adult student with severe disabilities, including autism and behavioral challenges. B.M. had previously been in residential treatment for 3 years due to his behaviors. Parents withdrew him from that program due to his progress and reenrolled him in the District. B.M.'s school district IEP provided for "door to door" transportation as well as a paraprofessional on the bus. B.M.'s bus picked him up at the bottom of his driveway.



B.M. also required assistance in the morning getting ready for school, including getting dressed, eating breakfast, taking his medications and getting to the school bus. Both of B.M.'s parents' jobs required them to leave their homes prior to B.M. getting on the bus. B.M. became less cooperative in the morning and would often refuse to get on the bus. The District arranged for an outside agency to come to the home in the morning, but this was unsuccessful. As a result, B.M.'s attendance began to decline. Parents eventually found another residential placement for B.M.

PROCEDURAL HISTORY: Parents filed a Due Process Complaint alleging that the District denied B.M. FAPE because it did not provide him with in-home programming, including a supplemental morning aide to help B.M. get ready for school. Parents claimed that this should have been provided as part of his specialized transportation services.

The District argued that in home services were outside of the scope of the IDEA because they are outside of school hours, are necessary because of the parents' work schedules rather than educational need and can

be provided by other outside agencies.

DECISION: Transportation is a related services that is required when it is necessary for a student to access and obtain educational benefit. Transportation "includes travel to and from school and between schools" and includes "specialized equipment (such as special or adapted buses, lifts and ramps) if required to provide special transportation for a child with a disability."

The Court held that nothing within this definition suggests that the requirement to provide transportation would be read so broadly as to extend to before school in home services to get the student ready for school. Moreover, schools are not required to fund before or after school care, especially when the requirement for said care is predicated on parents' work schedules.

The Court upheld the hearing officer's denial of compensatory education even for days that B.M. did not attend school. Again, the Court found that this was not the responsibility of the school district. The School District had provided appropriate transportation services for B.M. to include door-to-door transportation and a personal assistant on the bus.

IMPLICATION: This case underscores the limits of what a school district must provide under the IDEA. Review the definitions of "related services" if parents are requesting services that you feel are not the school district's responsibility. As this Court held—morning aides and in home morning instruction fall outside of the statutory definition of related service.

While at home behavior may complicate district programming, work with parents to lead them to appropriate agencies that may be able to provide them with in home support, as that does not fall under the requirements of the IDEA.

TRANSFER STUDENTS

(Continued from page 1)

In-State Transfer Students

When a student with a current IEP transfers from one district to another **within the same state**, IDEA requires that the new school district:

A. Provide Services Comparable to the Existing IEP

The district must **without delay**:

- Implement services that are **similar** (“comparable”) to those in the previous IEP.
- Provide comparable services until the district:
 - ♦ Adopts and implements the previous IEP **as written**, or
 - ♦ Develops and implements a **new IEP** through the standard IEP team process.

Because the student remains under the same state education agency, the eligibility criteria and evaluation standards are aligned, making adoption of an existing IEP more straightforward.

B. Ensure Prompt Transfer of Records

The receiving district must:

- Request the student’s educational records **immediately**.
- Ensure the sending district transfers the IEP, evaluations, and supporting documents “**as expeditiously as possible**.”
- The sending school district has 10 days from receipt of the request to supply a certified copy of the student’s records.

C. No Immediate New Evaluation Required

Because the student remains within Pennsylvania’s definitions of disability and eligibility criteria, a reevaluation is **not required**, unless:

- The district suspects a different disability category,
- Additional information is needed, or
- The parent and school agree that a reevaluation is appropriate.

Out-of-State Transfer Students

When a student with an IEP transfers from another state, IDEA still requires immediate support, but adds additional evaluation obligations.

A. Provide Comparable Services Immediately

To ensure continuity during transition, the receiving district must provide services comparable to those in the prior IEP without delay.

B. Conduct a Full Evaluation “If Necessary”

Because disability categories and eligibility standards vary by state, IDEA requires the receiving district to:

- **Conduct an initial evaluation if the district determines that one is needed** to establish eligibility under Pennsylvania criteria.
- Must be completed within 60 days
- Parent consent is required
- Continue comparable services during evaluation

C. Develop and Implement a New IEP

- Within 30 days of the ER

Transfer Timelines At A Glance

	<p>The receiving School District should not delay in providing services to special education students transferring into the District. The purpose of the IDEA's transfer provisions is to ensure that students with disabilities are not denied FAPE simply because they transfer schools. Review the below timelines to ensure continuing services.</p>
Student with IEP Transfers in the summer	<p>For both In State and Out of State Transfers, the IEP Team should meet prior to the start of the school year to ensure that the transfer student has an IEP in place to start the school year.</p>
Comparable Services Begin	<p>For both In State and Out of State Transfers, comparable services should begin immediately upon transfer.</p>
Adopt Existing IEP	<p>For In State transfers, adopt the existing IEP if the IEP is appropriate. If not the IEP Team should continue to provide comparable services and schedule a new IEP meeting within 30 days to develop a new IEP.</p> <p>For Out Of State students, a new IEP should be developed after the evaluation.</p>
Conduct an Evaluation	<p>For In State Transfers, evaluations are not required unless the Team feels additional information is necessary.</p> <p>For Out Of State Transfers, evaluations should be conducted to determine if the student qualifies under PA state law. Evaluations must be conducted within 60 days</p>
Finalize IEP	<p>For In State Transfers, if the existing IEP has not been adopted, develop a new IEP within 30 days of transfer</p> <p>For Out of State Transfers, finalize the IEP within 30 days of the Evaluation Report</p>

WHAT DO YOU THINK?

A high school student is evaluated and found eligible for services under OHI due to ADHD. Although an IEP was developed, parents did not sign the NOREP and services did not begin. The following week, the student in involved in a fight, with video evidence showing him pursuing the peer into a bathroom and continued the fight even after staff intervention. The fight was planned by the student due to a confrontation with a peer the weekend before.

Shortly after the fight, the student was hospitalized for severe mental health concerns, including suicidal behavior, delaying the manifestation determination. When the MDR team convened several months later, parents submitted a redacted hospital report the night before that was considered by the team. They also considered relevant information, including the ER, teacher reports, a video of the fight, parent input and prior discipline. The MDR team determined that the student's fight was not a manifestation of the student's disability based on it being a planned altercation where he tracked down a peer to engage in the fight. It was also not caused by the District's failure to implement the IEP since the IEP was never authorized by the parents.

Parents disagree. Do you think this was a manifestation of the child's disability?

- A. No. The District was not required to conduct the manifestation because parents had not agreed to the IEP.
- B. No. The Team correctly determined that the fight was intentional and preplanned rather than impulsively tied to ADHD
- C. Yes. The student's ADHD and his hospitalization clearly indicate that these behaviors were related to his mental health.

The student admitted to intentionally pursuing and fighting the peer to address a situation that occurred the weekend prior. Evidence suggests that the conduct was deliberate behavior rather than impulsive. The student did not have a pattern of violent behavior connected to his disability. Hospital records, although heavily redacted and only provided the night before, suggested that the student had intact judgment and awareness. Based on this, the hearing officer found that the district correctly determined it was not a manifestation of his disability. If you said B you were right!



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If you have a special education issue you would like to see addressed in subsequent issues of this newsletter, please write to or e-mail Trish Andrews at the above address.

Andrews & Price, LLP is the pre-eminent law firm in Western Pennsylvania in the practice of Public Sector Law. Our attorneys have more than 60 years of combined experience servicing School Districts. We provide a full range of legal services to our clients, including serving as Solicitor for various school districts, serving as special counsel for special education due process hearings, presenting seminars relating to the Reauthorization of IDEA and representing our clients in all types of litigation, including defense of numerous civil rights suits in federal and state Court.



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TRI-STATE AREA SCHOOL STUDY COUNCIL

Tri-State Area School Study Council of the Administrative and Policy Studies Department of the School of Education of the University of Pittsburgh seeks ways to increase organizational capacity in schools through problem solving, technical service, and staff development so all students will be better prepared to make contributions to both our democratic society and the world community.

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Consult Your Solicitor!

The legal issues discussed herein are for the purpose of providing general knowledge and guidance in the area of special education. This newsletter should not be construed as legal advice and does not replace the need for legal counsel with respect to particular problems which arise in each district. As each child is unique, each legal problem is unique. Accordingly, when districts are faced with a particular legal problem, they should consult their solicitor or with special education counsel to work through the issues on a case by case basis.