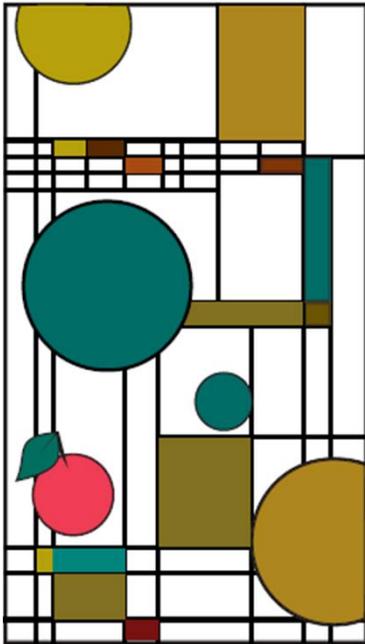
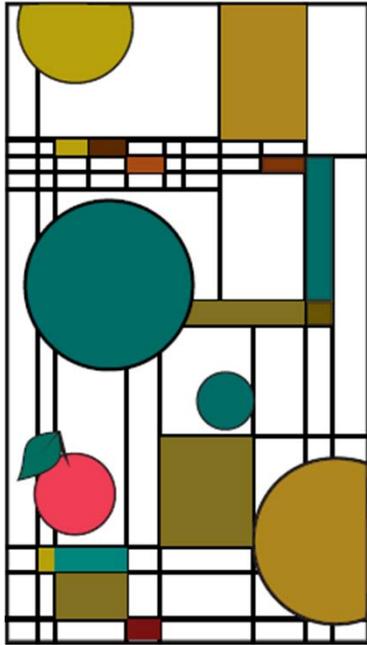

Graduation and the FAPE Balance



**5th Annual Wyoming
Department of Education
Leadership Symposium**



SCHOOL LAW CENTER

Amy J. Goetz, Attorney at Law
452 Selby Avenue, Suite 2-East
Saint Paul, Minnesota 55102
(651) 222-6288

agoetz@schoollawcenter.com

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- Parent
 - Private Student/Parent Lawyer
 - Former State DOE Staff
 - Former P & A Staff
 - Former Legal Aid Lawyer
 - High School Dropout
 - Student/Parent Perspective

Ground Rules

- Confidentiality “rules”
- Honor timeframes and breaks – I will make every effort to start and end on time
- Respectful listening and participation
- Handling questions
- If you need an extra stretch, take it
- At the end, would appreciate feedback

Basis of IDEA

- In enacting the IDEA, Congress found that:
- “Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society.”

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- “Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.”

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- Improved educational results have been impeded by low expectations
 - 30 years of research and experience show that special education can be “more effective by having high expectations . . . [so children are] prepared to lead productive and independent adult lives, to the maximum extent possible”

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- “As the graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities”

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- The primary purpose of IDEA is-
 - “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and *prepare them for further education, employment, and independent living*”

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- Congress based IDEA on concerns for post-school success for students with disabilities
 - The design of appropriate transition services must focus on the student's state of preparedness for life after high school

Graduation Rates

- Congress is concerned about improving graduation rates for students with disabilities
- IDEA requires each state to establish performance goals and indicators for students with disabilities, including to “address graduation rates and dropout rates”
 - 20 U.S.C.A. §1412(a)(15)(A)(iii)

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- Wyoming State Performance Plan includes a performance indicator to measure FAPE in the LRE
 - “Percent of youth with IEPs graduating from high school with a regular diploma compared to percent of all youth in the State graduating with a regular diploma”

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- Graduation rates for students with disabilities in SY 1998-1999 were 39.39% (334 students)
 - Graduation rates for students with disabilities in SY 2004-2005 were 48.13% (438 students)

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- In SY 2005-2006 WY state law specified minimum rates of proficiency required to receive a diploma
 - WY SPP sets a target to improve graduation rates from 2005-2012 of 51% of youth with IEPs graduating with diploma

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- There is reported a category of “other completers” that includes students receiving a “certificate of completion” (may be alternative school students)
 - No indication of standards for certificate
 - No report on #s of certificates

Factors Impairing Graduation

- A number of important problems in special education contribute to low graduation rates
- Disciplinary exclusions, including
 - School to Prison Pipeline

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- Failed progress, including ineffective methods of instruction, lack of reading proficiency, low expectations
 - Marginalization, including exclusion from important social culture of school

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- IDEA addresses these concerns towards reducing the impact of these factors by:
 - Limiting toward elimination disciplinary exclusions including referrals to law enforcement
 - Infusing principles and practices of positive behavior supports and interventions

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- Rising tide of expectations for improved methods of instruction and outcomes
 - Infusion of research-based practices
 - Alignment with achievement standards for all students

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- Equal opportunity to participate in nonacademic and extracurricular activities
 - Maximizing inclusion in the least restrictive environment, and integrating students with disabilities into the fabric of school culture

Transition Services

- ❑ IDEA defines transition services as a coordinated set of activities:
 - Designed to be within a results-oriented process
 - Focused on improving academic and functional achievement

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- To facilitate movement from school to post-school activities
 - Including post-secondary education, vocational education, employment, continuing and adult education, adult services, independent living, or community participation

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- Based on individual needs
 - Includes instruction, related services, community experiences, development of employment and other post-school adult living objectives
 - When appropriate, includes acquisition of daily living skills and vocational evaluation

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- Transition services must:
 - Begin no later than IEP at age 16
 - Or earlier if appropriate per the IEP team
 - 34 CFR §300.320(b)

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- The IEP must include:
 - Appropriate measurable postsecondary goals
 - Based upon age appropriate assessments
 - Related to training, education, employment
 - Where appropriate, independent living skills and transition services needed to reach those goals
 - 20 U.S.C.A. §1414 (d)(1)(A)(i)(VIII)

Improving Transition Services

- WY SPP has included a performance goal to ensure each IEP contains appropriate, measurable post-secondary goals
- WY SPP sets a target for SY 2009-2013 to improve to 100% compliance from 50.8% in SY 2005-2006

Kevin T. v. Elmhurst

(N.D. Ill. 2002)

- The IDEA mandates transition services “[t]o ensure that disabled students can function in society after graduation”
- For a student who is college bound, transition planning must include improvement in basic academic skills in order to succeed at college

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- Although student had accumulated enough credits for a diploma, the district unilaterally made the decision to graduate him against his parents wishes, his basic academic skills were very poor, and he was able to challenge the graduation

J.L. v. Mercer Island School Dist. (9th Cir. 2010)

- ❑ W.D. Wa. decided that the 1997 IDEA amendments and definition of “transition services” superseded the *Rowley* standard
- ❑ Said new standard: whether school provided “equality of opportunity, full participation, independent living, and economic self-sufficiency”

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- 9th Circuit reversed
 - Referring to the search to determine a FAPE as a “labyrinth of experts, educational policy and charged emotions” it embraced again the *Rowley* standard and rejected an enhanced standard where Congress did not expressly overrule it

Scope of Eligibility

- IDEA requires the provision of a FAPE to children with disabilities to age 21, unless inconsistent with state law
 - 20. U.S.C.A. §1412(a)(1)(A)
- WY provides that students are eligible for special education to the end of the school year in which they turn age 21
 - W.S. §21-2-502(b)

FAPE and Graduation Requirements

- “Children who graduate from our public school systems are considered by our society to have been “educated” at least to the grade level they have completed, and access to an “education” for handicapped children is precisely what Congress sought to provide in the Act.”
 - *Rowley*, 458 U.S. 176, 203 (1982).

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- However, the *Rowley* court explicitly refused to hold that “every handicapped child who is advancing from grade to grade in a regular public school system is automatically receiving” a FAPE. *Id.* at 203, n. 25.

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- Specifically the Supreme Court has refused to equate graduation with a free appropriate public education because it is possible for students to advance from grade to grade and graduate without receiving a FAPE. *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993).

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- The obligation to make a FAPE available does not apply to children who have graduated from high school with a regular high school diploma
 - 34 C.F.R. 300.102(a)(3)(i)

 - A regular high school diploma does not include an alternative degree that is not fully aligned with the state academic standards
 - 34 C.F.R. 300.102(a)(3)(iv)

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- Student who followed a regular education curriculum leading to a high school diploma was properly graduated because he was provided a FAPE. *Chuhran v. Walled Lake Consol. Sch.*, 839 F.Supp. 465, 474 (E.D. Mich. 1993), *aff'd* 51 F.3d 271 (6th Cir. 1995)
 - In order to graduate the student must complete his IEP requirements and otherwise meet requirements for general graduation.

Graduation Before Aging Out

- A student with disabilities may graduate earlier than the age of 21 if certain procedural safeguards are followed. *Birmingham v. Omaha Sch. Dist.*, (8th Cir. 2000)
- When a school intends to graduate a student before the age of 21, it must give prior written notice to the parents regarding this pending change in educational placement. *Id.*, citing 20 U.S.C. § 1415(b)(3).

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- Parents may contest the graduation by filing a complaint, entitling them to a due process hearing. *Id.*, citing 20 U.S.C. § 1415(b)(6).
 - At hearing the parents must prove that continued education is necessary for the student to receive a FAPE. *Id.*, citing 20 U.S.C. § 1415(f)(1)(A).

T.S. v. Ind. Sch. Dist. No. 54 (10th Cir. 2001)

- IDEA does not require graduating student be given exit meeting to review program to ensure graduation was appropriate
- School's obligation to student ceases upon graduation

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- Claim for denial of a FAPE becomes moot upon a *valid* graduation
 - Student may contest his graduation and seek compensatory relief

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- Students over the age of 21 may seek compensatory education services for violations of their statutory rights while they were still entitled to them. *Lester H. v. Gilhool*, 916 F.2d 865, 872 (3rd Cir. 1990); *Carlisle Area Sch. v. Scott P.*, 62 F.3d 520, 536 (3rd Cir. 1995).

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- “[C]ompensatory education must be available beyond a student’s twenty-first birthday. Otherwise, school district simply could stop providing required services to older teenagers, relying on the Act’s time-consuming review process to protect them from further obligations.” *Pihl v. Mass. Dept. of Educ.*, 9 F.3d 184, 189 (1st Cir. 1993).

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- Although IDEA entitles students to special education only until they reach age 21, the student may challenge the adequacy of the services and be awarded additional special education services after the age of 21 to cure the inadequacy. *Bd. of Educ. v. Ill. State Bd. of Educ.*, 79 F.3d 654, 656 (7th Cir. 1996).

Interagency Collaboration

- ❑ IDEA requires agencies serving students with disabilities to collaborate
- ❑ SEA ensures interagency agreement or other means for interagency coordination between each public agency and SEA
- ❑ The purpose is to ensure that all services needed for a FAPE are provided

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- This agreement must include:
 - identification of financial responsibility of each agency providing services
 - conditions and terms of reimbursement
 - procedures for resolving interagency disputes
 - 20 U.S.C.A. § 1412(a)(12)(A)(i-iii)

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- LEA is responsible for transition services if other agencies back out
 - If another agency fails to provide the transition services described in the IEP, LEA must reconvene the IEP Team to identify alternative strategies to meet the transition objectives
 - 20 U.S.C.A. § 1414(d)(6)

Department of Workforce Services

- State agency providing vocational rehabilitation services is the Wyoming Department of Workforce Services
- Serves youth in middle school, high school, college, or not attending school
- May receive services with or without a degree or diploma

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- Some of the services offered:
 - Career aptitude testing
 - Career exploration services
 - Employment & training for self-sufficiency
 - Vocational rehabilitation

- **Cheyenne Vocational Rehabilitation**

Robyn Thorne

1510 E. Pershing Blvd., Cheyenne, WY 82002

866-804-3678/307-777-7364

- **Lander Vocational Rehabilitation**

Schuyler Hinckley

1295 12th Street, Lander, WY 82520

866-414-3971/307-332-4465

State Graduation Standards

- IDEA does not address graduation planning, diplomas, or ceremonies directly
- Graduation standards are established by Wyoming statute

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- The state board of education ensures that educational programs offered by WY schools provide students an opportunity to acquire sufficient knowledge and skills –
 - at a minimum, to enter the University of Wyoming and Wyoming community colleges

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- ❑ to prepare students for the job market or postsecondary vocational and technical training
 - ❑ and to achieve the general purposes of education that equips students for their role as a citizen and participant in the political system
 - ❑ and to have the opportunity to compete both intellectually and economically in society.
 - W.S. § 21-2-304 (a)(ii)

Wyoming Graduation Standards

- K-12 students must meet the uniform student content and performance standards in:
 - Common Core of Knowledge:
reading/language arts, social studies, mathematics, science, fine arts and performing arts, physical education, health and safety, humanities, career/vocational education, foreign cultures and languages, applied technology, government and civics

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- ❑ Common Core of Skills: problem solving, interpersonal communications, keyboarding and computer applications, critical thinking, creativity, and life skills, including personal financial management skills
 - ❑ WY. Educ. Code Chapter 31 §7(a)

Performance on Standards is Ranked on a “Body of Evidence”

- Ranking falls into one of three levels:
 - Advanced endorsement - advanced performance in majority and proficient performance in remaining areas
 - Comprehensive endorsement – proficient performance in all areas

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- General endorsement - proficient performance in majority of areas

 - The high school diploma must identify endorsements which shall be stated on the student's transcript
 - WY Educ. Code Chapter 31 §9(c)(i-iii)

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- Who makes the decision as to the level of performance demonstrated?
 - Subject to IEP Team discussion/decision?

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- For students with special needs
 - BOE includes accommodations according to IEP or 504 plan
 - Accommodations shall not substantially alter the character of the assessments
 - WY Educ. Code Chapter 31 §10(f)

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- Standard application of graduation rules
 - With accommodations
 - Without accommodations

 - But, does not appear to be a provision for modification of the graduation rules

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- If students don't meet any of the 3 levels of endorsement for a high school diploma, it appears they are not eligible to graduate.
 - Must the IEP Team determine alternative graduation criteria for students unable to attain standards for a diploma?

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- For a child receiving special education services, eligibility for a regular education diploma must be measured by reference to the IEP rather than to a standardized curriculum. *Helms v. Ind. Sch. Dist. No. 3*, 750 F.2d 820, 824 (10th Cir. 1984); *Letter to Runkel*, 25 IDELR 387 (OCR 1996).

No Diploma, No Graduation, No Modifications

- Is this fair?
 - Discriminatory?
 - Consistent with 504?
- Fair to whom?
 - Employers?
 - Students?

-
- “While there is not a guaranteed right for every student with a disability to receive a diploma of graduation from high school, a student who meets the standards established by the State for a high school diploma cannot be denied a diploma on the basis of his or her disability.” *Letter to Anonymous*, 22 IDELR 456 (OSEP 1994).

IEP Goals and Objectives

- Attainment appears unrelated to graduation
 - Meeting IEP goals does NOT ensure or mandate graduation
 - Failing to meet IEP goals does not ensure or mandate continued eligibility

Graduation Ceremonies

- Equal opportunity considerations
- Separate ceremonies
- Ceremony with different class
- Must students meet graduation/diploma requirements to participate?
 - IEP goals and objectives sufficient?
 - Or should it be just a right of matriculation?

Capistrano Unified Sch. Dist. (OCR 2002)

- Student was not allowed to take part in his graduation ceremony
- Decision made by school, not on current information, and not by IEP Team was improper

Letter to Runkel (OCR 1996)

- A qualified student with a disability is eligible to participate in whatever graduation ceremony a student without disabilities would be eligible to participate

Aldine (TX) Ind. School Dist. (OCR 1990)

- The district failed to demonstrate an educational necessity for separate graduation ceremonies for severely disabled students

Woodland Hills School Dist. (SEA PA 1999)

- Student earned enough credits to graduate
- Hadn't met IEP goals and would not graduate
- District was ordered to allow participation in graduation ceremony
 - IDEA requires that students with disabilities receive equal opportunities to participate

Exit From Services

- When eligibility terminates by graduation with a regular diploma, or aging out, the school must provide a summary of academic achievement and functional performance
- The summary must include recommendations on how to assist the child in meeting postsecondary goals
 - 20 U.S.C.A. §1414(c)(5)(B)(i-ii)

Parental Participation

- IDEA requires prior written notice to parents of any proposal to change or refusal to change educational placement
 - 20 U.S.C.A. § 1415(b)(3)
- Graduation is a change in educational placement requiring prior written notice
 - 34 C.F.R. § 300.102(a)(3)(iii)

Parental Rights Transfer

- Parental rights transfer to the student at the age of majority under state law, unless the student is determined incompetent, or determined not able to provide informed consent regarding educational program
 - 20 U.S.C. § 1415(m)

Stock v. Mass. Hosp. School (Mass. 1984)

“No change in placement seems quite so serious nor as worthy of parental involvement and procedural protections as the termination of placement in special education programs.”

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- Reversed graduation of 14 year old in state institution made without parental notice or consent.
 - Graduation, as a change of placement, “requires significant parental involvement in the decision making process.” *Id.*, at 211.

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- “It is difficult to find justification for permitting a young man with Stock’s handicaps to pass through and out of the special education system by virtue of his signature on an IEP – which did not even mention the graduation decision – without some evidence that he or his parents were aware of the consequences of doing so and the alternatives available to them.” *Id.*

Challenges to Graduation

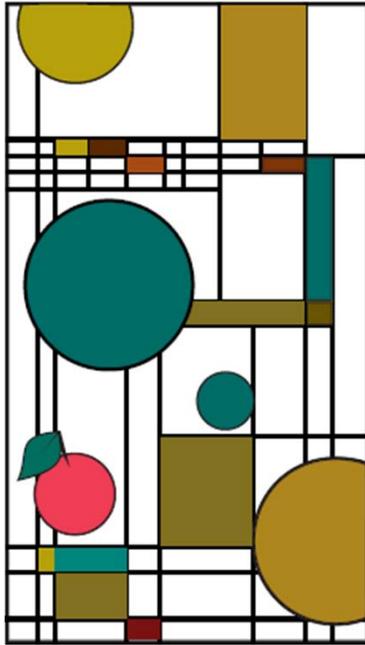
- If a student has graduated and does not contest his graduation, the case is moot. *Board of Educ. v. Nathan R.*, 199 F.3d 377, 381 (7th Cir. 2000)
- If a student does not contest his graduation, any request for prospective relief becomes moot. *Moseley v. Albuquerque Pub. Sch.*, 483 F.3d 689 (10th Cir. 2007)

“Stay-Put” Provision

- During the course of a proceeding to resolve a complaint, the child will remain in the current educational placement
- If graduation is challenged, then graduation is “stayed” pending the final decision
 - 20 U.S.C.A. §1415(j)

Questions / Discussion

- How do you meet the needs of a student with late onset disabilities, or conditions that worsen late in high school?



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agoetz@schoollawcenter.com