

Graduation Issues for Students with IEP's

The Legal Standard & Frequently Asked Questions

Legal Standard

FAPE generally.

Students with Individual Education Programs (IEPs) are entitled to a free, appropriate public education (FAPE).¹ They are entitled to FAPE until they either 1) graduate with a regular high school diploma, or 2) turn 21 years of age². A “regular high school diploma”³ means the student has met the state requirements for graduation with or without some accommodation.

When considering whether a student should graduate with a regular high school diploma, what accommodations may be necessary for the student to successfully take the exit exams for graduation or whether a student should graduate via an IEP, the school district must take into account a number of factors. This decision making process **must** occur in the IEP team.

The role of the IEP team.

The IEP team should address the following questions **at least one school year**⁴ before the student is expected to graduate or reach grade 12:

- What is the anticipated date of graduation? (e.g. graduation with same age peers, or graduation at age 21, or graduation when student meets certain IEP goals before age 21)
- Will the student graduate with a regular high school diploma? – meaning the IEP team is expecting her to meet all state standards for graduation with special education support but without changing the standards.
- Will the student graduate via an IEP? – meaning the student will not meet all of the state standards for graduation and the IEP team will designate certain goals that the student will achieve before being awarded a diploma.
- Will the student be expected to pass the exit examinations at the same level as their same grade peers? If so, are accommodations necessary for the student?⁵

¹ 34 C.F.R. §101(c)(1)(eligible students entitled to FAPE).

² The student who “ages out” of special education at age 21 may graduate with a regular high school diploma, leave school with no diploma or receive a diploma based on attainment of IEP goals. See the FAQ that follows for more information on this topic.

³ 34 C.F.R. §102(a)(3)(i)(regular diploma means one identical to the general education students’ diploma).

⁴ This is our recommendation for best practice; it is not a legal requirement.

⁵ The IEP team has been considering this question on an annual basis. However, the decision may change over time depending on the student’s needs.

- Will the student be expected to pass the exit examinations at an individual level that has been set by the IEP team?

Procedural safeguards for students with IEPs.

A student with an IEP and that student's parents must receive a **prior written notice** (PWN), preferably at least one school year before grade 12 or the anticipated date of graduation, that provides notice to the student and parents of the answers to the questions listed above – has the team decided the student should graduate, when, what type of diploma is to be awarded or should the student be permitted to walk through the graduation ceremony with her peers but continue her education after grade 12? The IEP team must take into account the student's preferences if possible.

The PWN should be written so that the student can understand the plan in most cases. It should provide enough detail so that an uninformed reader will understand the information that the IEP team considered and its decisions regarding the student's graduation. We often suggest that a PWN be written so that a person with a 6-7th grade reading ability can read and understand the information. Our recommendation is based on the fact that some parents have reading levels (for a variety of reasons including English as a second language, lack of education or a disability) that would prevent a complete understanding if we use educational acronyms or complicated language. Second, if a complaint or litigation ensues, we want the PWN written so that a judge or the Department of Education can understand the decision making process. The PWN must contain enough detail that the parent can make informed decisions⁶ and that a reader who is unfamiliar with the situation can track the district's process.

The PWN must also provide adequate notice of the standards that must be met by the student in order to graduate. The typical IEP form provides for:

- Transfer of rights at age 17 – this would be an excellent time to discuss and confirm the graduation plan and to confirm the decisions in a PWN.
- District-wide assessments – this includes whether the student will take the assessment and what accommodations may be necessary.
- State assessments – including whether the student will take them and what accommodations. This section also allows the team to decide that an alternative assessment is to be taken.

The law does not require that the criteria for graduation be included in the IEP. As a result, the team's decisions about graduation **must** be specifically outlined in the PWN in order to give parents notice of the decisions. We would not recommend that the specific criteria be

⁶ It is not infrequent that parents seek advice of friends, family or advocates and the PWN becomes a vehicle for the district's message to be re-considered by the family. The PWN is a tool that can really assist families to understand what is being recommended and can also protect the district in the event of a claim or dispute.

added to the IEP but instead that the PWN outlines the plan. The case manager must monitor student progress toward this plan and seek the input of the team if the student is not making progress, or the situation changes requiring a change in the graduation plan.

IEP team meeting.

Because graduation is a change in a special education student's educational placement⁷, the IEP team must meet and discuss graduation at least once before the student graduates. Make sure the PWN reflects the discussions about graduation. Parents sometimes challenge a student's graduation when the student has met state criteria but the parent wants special education services to continue, or the student wants to accept a diploma but has not completed some IEP goals. *See the FAQ for more information on this point.*

Transition summary.

A summary of the student's academic achievement, functional performance and recommendations to assist the student to meet the student's post-secondary goals, must be provided to the student who is graduating or ages out of special education.

Evaluation.

Evaluation is not required before a student graduates. (But be sure there is a PWN that addresses graduation very specifically and that it is timely provided to parents.)

Frequently Asked Questions

Question: Does the Individuals with Disabilities Education Act (IDEA) or state law guarantee that every student with an IEP will graduate?

Answer: No. Some students will not graduate for a variety of reasons including for the student who was projected to graduate via an IEP, the student failed to complete the goals despite appropriate special education services; the student aged out or dropped out of school. For the student who was expected to graduate with a regular diploma, the student may not have based the exit test(s) or has not completed the required coursework, or the student drops out or changes course and obtains a GED for example.

Question: Must the district grant a diploma to a student who has met IEP goals but not satisfied either the state required coursework or passed the state exit tests?

Answer: No. The district is not required to grant a diploma in this case. How the district proceeds will be governed by what the IEP team decided previously about how the student was to graduate and whether there have been changes in circumstances. For example, if in grade 11 the IEP team determined that a student with average intelligence and muscular dystrophy would

⁷ 34 C.F.R. §300.102(a)(graduation with a regular diploma is a change in placement).

be required to meet all state standards but the student's disease progressed to a point where he did not have the stamina to complete the course work, the IEP team would meet to consider the change in circumstances. The team might justifiably change the graduation plan for this student.

Question: If a student's written graduation plan (found in the PWN) indicates she will earn the required credits and pass the state exit tests, and the student has completed the credits and passed the tests, does the district have to continue to provide her IEP services or deny her FAPE?

Answer: No. Parents have challenged a school district's award of a diploma in such situations arguing that the student was entitled to FAPE until age 21 so she should not be graduated. The courts have held that once the student completes the agreed upon graduation plan and the student is eligible to graduate the school district is relieved of the obligation to provide FAPE.

Question: Can the IEP team agree that the student in the question above **may** continue to receive special education services until age 21?

Answer: Yes. The team could decide that the student won't accept the diploma but will continue to work on IEP goals. This should have been decided at least by the year before grade 12 and reflected in the PWN for that year's IEP.

Question: A 20 year old student whose second language is English, arrived in the United States 3 years ago and has special education services because of post-traumatic stress disorder has not been able to pass the reading exit exam. She has tried 3 times. Can the IEP team waive the requirement now and allow her to receive a regular diploma?

Answer: Maybe. In this case, the IEP team should have considered graduation when the student began school in the US at age 17. If the team determined at that time that the student had to take and show progress on the reading exam that would be a reason to allow her to receive a diploma now. It is an urban myth that 3 tries allows a student to waive the state required exit test. The student in this case has two options: 1) continue her education until age 21 and have the IEP team consider an IEP graduation or 2) attempt the GED or drop out (the latter being a bad choice but a choice.)

Question: An 18 year old student with special education services for a learning disability has completed all the required coursework but cannot pass the state reading exam. Can the IEP team change his graduation plan to an IEP driven graduation?

Answer: Technically this can be done but this course of action leaves the district open to challenge by the parent or the Department of Education. This should have been address in the student's junior year and the student should be able to waive the state requirement for exit tests but only when his disability prevents him from successfully completing the test. The learning disability in this case would have to be a fairly significant case of dyslexia or a related reading disability to justify this decision so late in the student's educational career. A better (or safer)

option, would be to allow the student to walk through graduation, provide additional individualized reading instruction geared to help him re-take the test and write the IEP & PWN to state that progress on the next exit exam will be required for graduation.

Question: A sophomore student has an average IQ coupled with school phobia. She receives special education under the OHD label and has accommodations for days when her anxiety prevents her from coming to school. Can the IEP team modify the state required coursework for this student so that she can graduate despite her inability to complete some courses such as science labs or physical education?

Answer: Yes. The IEP team can modify the graduation requirements. The district must keep ever present in its mind the opportunity to unintentionally discriminate in such a case however. It must consider the criteria under which it is modifying curriculum or requirements to ensure that minority and majority students are treated the same with regard to modification.