

## Wrongful Graduation: What Are The Factors?

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### The Issue

Parents and school districts sometimes argue over whether the district's graduation of a special education student was appropriate – or was premature. One of the circumstances in which this can occur is when the student meets the standard criteria for graduation but arguably still is not ready for independent young adulthood. When there is still a dispute after the district has graduated the student, I refer to such disputes as *wrongful graduation* cases.

Special educators approach this issue knowing at least two things. First, we know that under the IDEA, graduation is a "change in placement." This has procedural implications, including the notice requirement and the "stay put" requirement. Second, we know that some special education students graduate based on standard requirements, and others graduate "on their IEP goals." In *Doe v. Marlborough Public Schools*, a June 2010 federal court decision from Massachusetts reminds us of the possibility of having to face a *wrongful graduation* claim, and provides an analytical framework that is relatively helpful for school districts.

### A Recent Case and its Standard

In the Massachusetts case, there was little question that the student met the standard requirements for graduation. Even so, the parents argued that the discontinuation of services was improper because the student had not made sufficient progress on his IEP goals. The family's attorney did not seem to challenge the adequacy of the student's senior-year IEP as written, but based the claim on the student's actual progress and readiness for adult life. (Such a limited attack on a school district is rare in Pennsylvania.) The court rejected the family's challenge in two ways. First, the court found that the student had made "sufficient" progress on most IEP goals and "limited" progress on some others. Second, and more important as a precedent, **the court ultimately concluded that the proper legal test was whether the senior-year IEP was appropriate when written, not the degree of progress that the student achieved after the IEP was written.** This is consistent with the general "no Monday-morning quarterbacking" rule (sometimes called the Fuhrmann rule) in Pennsylvania. But the use of this rule is noteworthy because the federal judge applied it to a senior-year IEP in order to decide a *wrongful graduation* claim.

Earlier in the case, the hearing officer had focused on actual progress during the senior year and the student's (or alumnus') remaining needs after the senior year. With that focus, the hearing officer had held that the cessation of services (a/k/a graduation) was improper. However, the federal judge said that the hearing officer used the wrong standard. The federal judge focused on the appropriateness of the senior-year IEP, and ruled that the school district had complied with the law. Thus, it did not violate the IDEA to graduate the student based on his attainment of standard graduation requirements.

The federal judge also addressed how "stay put" is supposed to work in the graduation context. This was

complicated by the fact that a hearing had not been requested until the October following graduation. Notwithstanding that *timing* issue, the court agreed with the hearing officer that, once the hearing was requested, the district was required to maintain the services that it had provided during the previous year.

The result in the Massachusetts case favored the district, and the test used by the court favors school districts in at least one sense: **the fact that a student with disabilities still has needs was not taken as proof that the graduation was inappropriate.** Under the facts of that particular case, the court found that, since the senior-year IEP was appropriate, so was the graduation.

### **The Lesson**

One key step in planning for graduation is achieving consensus about whether a student's graduation will depend on meeting standard graduation requirements or on achieving -- or making progress on -- IEP goals. Districts should not wait until a few months prior to graduation to raise this issue for the IEP team's -- including the parents' -- consideration. Conversely, if a district wisely raises the issue a few years in advance and achieves consensus on the criteria for graduation, the district should not be shocked (or overly rigid) if one or more members of the IEP team changes their mind as graduation nears. Many hearing officers would say that the law does not require a parent to be consistent.

Although it did not occur in the Massachusetts case, Pennsylvania school districts should expect that *wrongful graduation* claims will be accompanied by arguments over whether the IEP goals were appropriate and whether the *transition* services specified in the IEP were appropriate. The IEP format used by most Pennsylvania school districts sets a trap for unwary school districts. This is because the so-called transition plan section seems to promote the listing of broad, vague adult-life aspirations that are frequently not matched by concrete goals and specially designed instruction. This can leave a school district open to the claim that, by recording the family's aspirations, the district has acknowledged the vast needs of a student without trying appropriately to meet those needs. Perhaps the best way to avoid this is not to just list the broad aspirations of the family but to stay focused, in writing, on what the school district can and should do while the student is in high school to set the student up for post-high school life. This is, of course, not the same as appearing to promise what adult life will look like for the particular student. Writing transition goals that are both reasonably optimistic and reasonably realistic can be a challenge. This challenge should be confronted thoughtfully on the transition page as well as the goal pages of the IEP.

The school district in the Massachusetts case had to face a wrongful graduation claim but did not face a claim that the transition components of the previous IEP were inappropriate when written. Pennsylvania districts should assume that, if they are confronted with a wrongful graduation claim, they will have to defend the previous IEP as well. Such a defense will be harder if the previous IEP was laden with broad unrealistic aspirations that can be re-characterized as needs, goals, or commitments.

### **Conclusion**

Graduation is generally a source of pride but it sometimes engenders a sense of abandonment. Because of the less effective array of adult services for people with disabilities, school districts should not be

surprised if parents of some students want to retain the entitlement-based support of school districts even when their child satisfies the standard requirements for graduation.

Under the IDEA, graduation can be challenged. The Massachusetts case provides a standard -- i.e., if the senior-year IEP was OK, so was the graduation -- that is favorable to school districts. Even so, the possibility of a *wrongful graduation* claim should cause Pennsylvania school districts to be careful in the writing of *transition* pages in high school students' IEPs and the development of their IEP goals.

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