




**Andrew F: Applications to Transition
Advocacy Skills Training**

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**Review the U.S. Supreme Court's
Decision in Rowley, in 1982**

- Courts must look to federal policy and the IDEA to ascertain parent's rights;
- The Supreme Court did not endorse a specific standard for FAPE; but,
- "advancing from grade to grade," and
- "more than de minimus" and
- "basic floor of opportunity" language evolved as hallmark of the Rowley decision.


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Rowley construct of FAPE

- Personalized instruction;
- Sufficient supportive services;
- Reasonably calculated to confer/permit the student to benefit from instruction;
- FAPE provided at public expense and under public supervision; and
- meets state standards/grade levels.
- Course correction required when progress stalls.


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Since Rowley, educational landscape has changed

- IDEA (1975) ended exclusion of large numbers of students with disabilities from public school;
- Rowley defined FAPE opinion in 1982;
- Perkins Vocational and Technical Education Act (1984)
- IDEA reauthorized in 1990 added transition services be included in IEPs.


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Shift: From “Access driven” to “results-oriented” educational agenda

- 1994 – Improving Schools Act (“IASA”)
- 2001 – No Child Left Behind (“NCLB”) (minimum academic proficiency standards)
- 2004 – IDEA reauthorized again: (alignment of “basic floor of expectations with NCLB high quality standards (ideally)
- ESSA – 2015 “Every Student Succeeds Act” (specific coordination with the IDEA)

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Federal Circuit Courts Split on FAPE

- After Rowley, lower courts have used a variety of terms from the decision, “some” “minimal” “meaningful” “more than the minimum” to quantify whether a student is receiving a FAPE.

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“Just above Trivial” standard

- Circuits 1 and 2 require that educational benefits be just above or “more than only trivial” advancement.”
- 3rd Circuit: “meaningful educational benefit” standard; rejects the more than trivial standard:
- 4th Circuit: Same as 1st and 2nd, but in 2015 mentioned a “heightened standard”

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Circuits 5, 6, & 7


- 5th Circuit: IEP benefit must be “meaningful”
- 6th Circuit: Agrees with the 3rd Circuit; requiring a heightened educational benefit/standard: to enable students to lead productive, independent adult lives to maximum extent possible.”
- 7th Circuit: Rejects the heightened standard; holding that a student who makes just above trivial progress has received a FAPE.

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8th 9th and 10th Circuits

- 8th Cir.- slight progress okay’
- 9th Cir. - Heightened benefit standard; “schools must do more than simply “open the door” to students with disabilities”
- 10th Cir. – “just more than deminimus,” rejecting 3rd Circuit’s higher standard.
- 11th Cir. – Same as 8th, 10th circuits.


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D.C. Circuit

- Applies Rowley, stating that an IEP must be “reasonably calculated to ensure educational benefits.”


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Andrew F. v. Douglas Co. Sch. Dist. 2017

- Reversed 10th Cir. Decision in Colorado;
- Held: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.
- This standard is more demanding than the previous 10th Circuit test: “merely more than de minimus”


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“Unique Circumstances of the Child”

- “...a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances;”
- Grade to grade advancement – for some.
- For others, IEPs must be appropriately ambitious;”
- Every child should be able to meet challenging objectives.


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Andrew F. rejects the “more than deminimus” standard

- Objectives should be “challenging”
- “markedly more demanding” standard than the 10th Circuit deminimus test.
- IEP purpose: plan for academic and functional advancement/progress.
- Focus is on integration in general education


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“appropriate progress: Andrew F

- Court did not elaborate in detail;
- IEP inadequacy turns on the child's unique circumstances;
- No bright line rule.

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School District's responsibilities under Andrew F

- Decision elaborates on “deference” to school authorities;
- IEP purpose: to allow parents and school to fully air their opinions about how to achieve progress;
- School is responsible for explaining how the IEP is “reasonably calculated to enable progress in light of student's circumstances.”

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Andrew F Facts: Parents

- IEP failed to address all areas of educ. need;
- Drew made no progress in several academic and functional goals;
- Behaviors escalated over two years; preventing progress;
- Parents enter Drew in private school – 5th gr.
- Parents filed due process complaint to recover tuition costs.

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Due Process Level Findings

- (District did not challenge private school as improper)
- ALJ found IEPs contained little or no progress reporting measurement data;
- When data did exist, lacking in detail; conclusory;
- ALJ found that parents were active participants in IEP process; they received progress reports quarterly; draft IEPs.

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Progress report findings by ALJ

- Parents received quarterly reports & draft IEPs;
- But ALJ found that the reporting defects did not adversely impact the team's ability to design and implement the IEP

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10th Circuit on progress reports:

- 10th Circuit Court concluded that even though the progress reporting may not have been appropriate-- because the parents were aware of the reports, and because parents were full IEP participants, there was no evidence Drew was denied a FAPE.

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FBA and BIP issues at ALJ level

- Escalating behaviors: furniture climbing;
- Removing his clothing at school;
- Urinating on classroom floor;
- District scheduled autism/behavior consultant to advise IEP team one month after IEP offered;
- Parents did not attend that meeting;
- Withdrew student before meeting date.

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FBA/BIP required only in limited circumstances

- IDEA merely requires schools "consider" behavior interventions;
- Schools not required to do so, unless...
- Student is removed due to disciplinary change of placement/suspended 10 days.
- 10th Circuit agreed the school complied with federal law because it considered various behavior strategies.

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**Parents' substantive challenges:
IEP inadequate because:**

- 5th grade IEP was similar to past 4 IEPs; therefore, not reasonably calculated to provide educational benefit;
- ALJ failed to consider impact of escalating behavior on issue of IEP adequacy;

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ALJ Findings in Endrew F


- Despite reporting deficiencies, Drew made progress in some goals; ergo: he received "educational benefit" in the district;
- Goals increased in difficulty year to year;
- That some objectives remained static not considered inappropriate, as he was not ready to progress.
- Parent conceded she saw some academic progress in 1st, 3rd and 4th grades.

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10th Circuit conclusion:

- "close case" but the IEP was substantively adequate;
- District not required to pay tuition reimbursement to parents.
- Decision reversed 3/22/17 by U.S. Supreme Court at 580 U.S. (2017)


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Endrew F vocabulary

- Standard left unclear, but is “markedly more demanding” than the de minimus test used by a majority of circuits.
- Consider the student’s particular circumstances;
- a “more demanding” standard;
- Applies IDEA “high expectations” terms


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Endrew F. Impact: Transition IEP

- May strengthen transition as a results oriented process;
- Strong transition statutory language already in place:
- “Individualized”; “coordinated set of activities”
- Focused on improvement of academic and functional achievement.


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Endrew influence on transition IEPs

- Endrew F not limited in scope;
- Transition plans: Ambitious goals;
- Good language: academic goals are not the only criteria for FAPE in IEPs;
- progress reporting fidelity emphasis;
- Focus on transition assessments in FBA/BIPs.


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Transition Plan Elements

- Transition Assessments
 - Goals and Post-Secondary Outcomes based on assessments
- Transition Services
 - Includes course of study


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Transition Assessments

- Provide information for IEP teams to use in developing and writing practical, achievable, and measurable post-school goals and to identify the transition services necessary to help a student reach those goals.
- At a minimum, IEP teams should administer transition assessments (formal and informal) in the areas of education and training, employment, and independent living.


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Transition Assessments

- Transition assessment should provide answers to the following questions:
 - What does the student want to do after secondary school (education or training, employment)?
 - Where does the student want to live (apartment, family home, group home)?
 - How does the student want to take part in the community (transportation, recreation, community activities, etc.)?


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Transition Assessments

- Transition assessments consist of a variety of formats and include:
 - Behavioral assessments
 - Aptitude tests
 - Interest and work values inventories
 - Personalities or preference tests
 - Career maturity or readiness tests
 - Self-determination assessments
 - Work-related temperament scales
 - Vocational assessment
 - Transition planning inventories


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Transition Assessments

- Begin assessments BEFORE a student turns 14.5 and BEFORE goals or services have been selected
- Foundation for developing post-secondary goals
- Ongoing process
 - Not required to conduct assessments annually
 - Should continue to collect data that adequately captures the student's progress, abilities, needs, preferences, and interests to ensure a student's transition plan continues to accurately reflect goals for post-secondary life

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Transition Planning Goals

- Appropriate measurable post-secondary goals;
 - Same criteria as other IEP goals. SMART goals
 - Transition goals require criteria for completion and progress reports
- "based on the student's needs, taking into account the student's strengths, preferences and interests."
34 CFR §300.43(a)(2)
 - Rochelle Twp. H.S. Dist No. 212 39 IDELR 58 (2003)
 - Yankton School District, 93 F.3d. 1369 (8th Cir. 1996)
 - Gibson v. Forest Hills School District Board of Education, 62 IDELR 261 (S.D. Ohio 2014)

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Transition Planning Goals

- “Dracut operated without meaningful assessments for most of the two year period in question and never provided appropriate, measurable goals related to C.A.’s needs. The Hearing Officer concluded that this led directly to Dracut’s failure to propose appropriate transition plans and services.”

Dracut Sch. Comm. v. Bureau of Special Educ. Appeals of the Massachusetts Dep’t of Elementary & Secondary Educ., 737 F. Supp. 2d 35, 51 (D. Mass. 2010)

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Transition Planning Goals

- According to an Illinois IHO, a district deprived a student of FAPE by failing to provide him with appropriate transition services. The evidence showed that the student’s transition plan was devoid of measurable goals and wasn’t based on a comprehensive transition assessment. Accordingly, the IHO ordered the district to revise the student’s transition plan once it conducted an appropriate transition assessment. In re: Student with a Disability, 115 LRP 10858 (SEA IL 03/02/15)


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Transition Services

- Must be written into the IEP;
- Includes courses of study;
 - Description of the coursework necessary to prepare a student for post-secondary activities and goal achievement and should list every course the student is required to take in order to graduate
 - Course of study required even if non-diploma track
- Individualized, results-oriented process;
- Focused on **improving academic and functional achievement**.*

* 34 CFR §300.43 (maximization language)


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IDEA definition: Transition Services

- “A coordinated set of activities for a child with a disability that is designed to be within a result-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation.”
34 CFR §300.43(a)(1)


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Transition Plan and Services as Free Appropriate Public Education (FAPE)

- The *Rowley* standard has been upheld by courts in transition related cases.
 - *Board of Education of the Hendrick Hudson Central School District v Rowley*, 458 US 176 (1982)
- But transition is a RESULTS ORIENTED PROCESS;
- Focused on Improvement of academic and functional achievement;
- To facilitate student from school to post-school activities.

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Rowley standard applied to Transition

- The Rowley Court introduced the “basic floor of opportunity” as the standard applied to public schools in FAPE disputes.
- In Rowley, the Court rejected the maximization or full potential standard endorsed by the trial court and the Second Circuit Court.

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Post-IDEA 2004 Transition Decisions

J.L. and M.L. ex rel K.L. v Mercer Island School District, 592 F.3d 938 (2010)

- The Ninth Circuit reversed a federal district court's order that reasoned that the IDEA had supplanted the Rowley holding as it applied to transition services as an outcome-oriented process as defined in IDEA 1997. The issue was reimbursement for private school tuition to achieve FAPE to an LD high school student.
- The ALJ awarded comp. ed.; found that the School District had not provided FAPE, and the District Court reversed, based on the IDEA standard of equality of opportunity, full participation, independent living and economic self-sufficiency.

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Post-IDEA 2004 Transition Decisions, cont'd.

Mr. and Mrs. C. and K.C. v. Maine School Administrative District No. 6, 538 F. Supp. 2d 298 (D.Me. 2008)


- The student, a 17 year old with autism, obtained compensatory education for FAPE violations including failure to implement substantive transition related goals and services, even though the trial court rejected the parents' higher standard of FAPE arguments.
- After several violent outbursts, student was moved to a portable classroom isolated from peers. School District failed to implement the last agreed upon IEP as stay-put placement. IHO ordered 10 weeks of compensatory education.

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Transition Services

- **Must** include:
 - Instruction (examples: take an adult living course; take an ACT/SAT prep class; have transportation training; get tutoring in reading).
 - Community experiences (examples: buy groceries; volunteer at the animal shelter; look at apartments for rent; open a bank account).
 - Job and other adult living objectives (examples: practice interviewing; apply for DRS; job shadowing; get a driver's license; learn how to self-advocate).


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Transition Services

- **May** include, if appropriate:
 - Daily living skills (examples: learn to cook; practice organizational skills; learn to use an ATM card; hygiene skills).
 - Functional vocational evaluation.


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Examples of Transition Services

- Instruction (high school, career program or post-high school curriculum);
- Evidenced based reading methodologies; behavior programs, specialized consultants;
- Related Services (transportation, AT, counseling, etc.)
- Community experiences;
- Development of employment; (job shadow/placement)
- Post-school adult living objectives;
- Acquiring daily living skills;
- Vocational evaluation;
- Assistive technology evaluation;
- Special education and enhanced related services.


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Non-Academic/Extra Curricular

- Transition services may be non-academic
- Counseling
- Athletics
- Transportation
- Health services
- Recreational services
- Special interest groups
- Referrals to community agencies
- Job development
- Career counseling; career testing

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Failure to Invite Outside Agencies

- "it has failed to provide children with a free appropriate public education, and it has failed to invite agencies that provide transition services to the meetings at which post-secondary goals and transition services are discussed."

United States v. Arkansas, 794 F. Supp. 2d 935, 983 (E.D. Ark. 2011)


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Failure to Meet Transition Objectives

- 20 USC § 1414(d)(6) and 34 CFR §300.324(c)
If a participating agency, other than the local educational agency, fails to provide the transition objectives described in the IEP, the local educational agency must reconvene the IEP team to identify the alternative strategies to meet the transition objectives for the child set out in the IEP.
- See, Mr. and Mrs. C. and K.C. v. Maine School Administrative Dist. No. 6, 538 F. Supp.2d 298 (D.Me.2008); See also 49 IDELR 36 (Magistrates' Recommended Findings of Fact and Conclusions of Law) and 46 IDELR 239 (IHO Decision)


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LRE in Transition Programs

- **Least Restrictive Environment**, 34 CFR § 300.114
 - Children with disabilities, including in public or private institutions or other care facilities, are educated with children who are non-disabled
- Special classes, separate schooling or other removal of children with disabilities from regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- Spitzer-Resnick, 59 IDELR 230 (OSEP 2012) least restrictive environment provisions of IDEA apply to work placements and other settings for transition services that are outside the ordinary educational setting, but separate employment is not prohibited; and that supplemental aids and services should be considered and provided to enable students to participate with students without disabilities in work placements


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State Funding v. LRE Mandate


- A state funding mechanism must not result in placements that violate the LRE requirement.
- A state must not distribute funds to programs that discriminate or refuse admission to students with disabilities.
- *Serventi v Bucks Tech High School*, 255 FRD 159 (E.D. Pa 2004). A Pennsylvania federal district court approved a consent decree that struck discriminatory policies that prevented admission by students with disabilities to regional technical and vocational programs.
- *Frazier*, 16 IDELR 379 (16 EHLR 379) (OCR 1989). OCR found a violation of Section 504 in unwritten policy excluding students with disabilities from cosmetology course.

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When Does the Denial of Transition Services entitle the Student to Compensatory Education?


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School Committee of the Town of Burlington v Dept of Education, 471 UW 359 (1985)

- The U.S. Supreme Court concluded that the Education of the Handicapped Act (EHA) (IDEA's predecessor) authorizes monetary reimbursement for compensatory education such as a private school when FAPE was denied, because the EHA directs the court to grant appropriate relief, based on the broad discretion of the trial court and the ordinary meaning of the statute.


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Board of Education of Twp HSD 211 v Ross, 486 F.3d 267 (2007)

- The Court of Appeals found that the absence of transition goals or plan of services in high school students' IEP was a minor procedural flaw rather than a denial of FAPE for a student with Rett Syndrome. The court deemed the student unable to benefit from a comprehensive transition plan of services and goals.


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Kevin T v Elmhurst CSD, 2002 WL 433061 (2002)

- An Illinois federal court ordered reimbursement and compensatory services for a school district's failure to draft a timely and adequate transition plan.
- See also ISBE Case No. 2015-0263


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Urban v Jefferson CSD, 89 F.3d 720 (1996)

- The Tenth Circuit affirmed the U.S. District court and reversed an IHO order regarding the student's preference for his neighborhood high school where he could receive preferred Transition services.


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Board of Education of the City School Dist of the City of New York, 41 IDELR 114 (2004)

- Although the ALJ found the student's transition services failed to meet the procedural requirements of the IDEA, and he received an inadequate transition plan and was denied FAPE, the state level appellate review found that this did not entitle the student to compensatory education because the student was provided transition services that were not reflected on his IEP; and the denial of FAPE was not a "gross violation of the IDEA."


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East Hartford Brd of Ed, 50 IDELR 240 (2008)

- In this extensive and thorough IHO decision concerning a 21 year old Down Syndrome student's transition plan, the IHO found numerous defects, including non-specific goals, unilateral discontinuation of support services, and the misrepresentation of a student's placement on the LRE continuum, and ordered two years of compensatory services.


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Petrina W v City of Chicago PSD 299, 2009 WL 5066651 (2009)

- An Illinois federal district court reversed a hearing officer on the issue of when eligibility for compensatory education becomes ripe. The IHO found the student had been denied FAPE for two years, ordered that the 19 year old continue to be educated in the private school where she was already placed, but had declined to provide compensatory education, based on erroneous determination that such claim was not ripe until the age of 22. The District court remanded the matter to the hearing officer to determine the amount of compensatory education required to give the student the benefits that would likely have accrued had she been given a FAPE.


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Montgomery County Public School, 40 IDELR 149 (2003)

- School District was ordered to provide compensatory educational services to a 20 year old with Down Syndrome because the school district failed to include travel training in his IEP.


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Vocational Education as Part of a Transition Plan

- “organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requirement other than a baccalaureate or advanced degree.” 34 CFR § 300.39(b)(5).
- Courts and Hearing Officers’ Enforcement of Vocational/Career and Technical Education Instruction

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Serventi v Bucks Tech HS, 255 FRD 159 (2004)

DeVries v Fairfax County Sch.Brd., 882 F.2d 876 (1989)

Frederick L v Thomas, 551 IDELR 569 (1980)

Nashville-Davidson Cty Sch, OCR, 16 EHRLR 379 (1989)

Gorski v Lynchburg Sch. Bd., 441 IDELR 415 (1989)

Fitz v Intermediate Unit No 29, 403 A.2d 138 (1979)

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Attendance Issues

- *Springfield School Committee v Doe*, 623 F.Supp.2d 150 (2009)

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Remedies

- **Request an Independent Educational Evaluation** to obtain reliable and accurate assessment data
- **Request mediation** to return to a high school or a transition-based program
- **Request a due process hearing** to return to school, challenge an inappropriate transition plan, and obtain additional educational services
- **File an administrative state complaint** regarding the school's failure to write a transition plan

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