

# Transition Planning for Children with Disabilities

By Adrienne Arkontaky

Two weeks ago, my daughter Jordan began school at a residential program in upstate New York. She is 17 and has multiple disabilities. She has lived at home until now. We are excited that Jordan is able to spend time with her peers and an incredible, nurturing staff in a fun and stimulating environment. However, we are also nervous that we no longer have control over her everyday life. This is a period of true "transition" for all of us.



When a child with disabilities approaches the age of majority, families face many challenges. It can be a very unsettling time and I believe we, as special needs planning attorneys, should be familiar with the issues families face and understand some of the options and strategies that exist to address a family's concerns. We can take what I like to call a "holistic approach to special needs planning." We can offer referrals to organizations and agencies able to work with families to assist children transition into the adult world by taking into consideration the unique needs of the child and concerns of the family. Being able to address issues revolving around transition planning will add value to and distinguish your practice. A family very often looks to a legal advisor for advice on transition planning for children with disabilities, and with some research you will be able to assist.

Families of children with disabilities are often faced with decisions regarding appropriate housing for their children, post-secondary education, employment concerns, health care coverage and guardianship. I will devote this column to discussing the challenges families face and identifying possible solutions that are available to families. I will also discuss the legal protections that may be asserted by young post-high school adults with disabilities and how to invoke these protections.

In a previous column, I discussed the Individuals with Disabilities Education Act (IDEA). The IDEA protects students with disabilities until a child graduates from high school or reaches the age of 21. The exact age depends on the level of disability of the child and the program the child is enrolled in. Parents of children with disabilities are often surprised to learn that once their child leaves high school the child is no longer eligible for services and the protections under the IDEA. After high school, a young person with disabilities is protected from discrimination under Section 504 of

the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA).

Section 504 asserts that no otherwise qualified person due to a disability may be denied participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance (29 U.S.C. § 794(a)). It should be noted that this statute applies to only private and public entities receiving federal aid. However, since almost all public and private colleges receive federal aid, most post-secondary institutions must abide by the requirements of Section 504. The federal Office for Civil Rights is responsible for enforcement of Section 504 requirements.

The Americans with Disabilities Act prohibits entities that operate places of public accommodation from discriminating against persons with disabilities by denying them full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations they provide (42 U.S.C. § 12182(a)). Discrimination, harassment, constructive dismissal and retaliation claims are brought under the ADA as well as Section 504.

It is important to remember that in suits brought under these statutes, the claimant must show that he or she is disabled and is qualified for the protections afforded. For the purposes of the ADA and Section 504, a person with a disability is anyone who has a physical or mental impairment that substantially limits one or more life activities, has a record of such impairment or is regarded as having such impairment. With respect to post-secondary education, a qualified student with a disability is one who is able to meet a program's admission, academic, and technical standards either with or without accommodation. I like to say that the ADA and Section 504 "level the playing field."

More than ever before, students with disabilities are entering colleges and other post-secondary educational programs. Colleges, universities and vocational programs are beginning to realize that they must address the needs of students with disabilities. Many institutions have developed programs geared specifically toward students with learning and other disabilities. Many post-secondary programs have departments and administrators specifically devoted to supporting and addressing the concerns of students with disabilities. We work with educational consultants who explore post-secondary options and advise families on appropriate choices for a child with special needs. They also assist families seeking appropriate housing and vocational opportunities.

Families must remember that post-high school, the young person must provide documentation "proving" they have a disability in order for the college or other educational or vocational program to consider a request for accommodation. Many post-secondary institutions will provide accommodations to students with disabilities as mandated under Section 504. Testing accommodations may include provisions such as large print, Braille, additional time, oral instruction, readers and guides. Under the statute, dormitory rooms and classrooms must be accessible. Schools must provide reasonable accommodations and there is much case law dedicated to determining what is reasonable. In one case, *Maczarczyk v. New York*, 956 F. Supp. 403 (W.D.N.Y. 1997) a college applicant suffered from an anxiety disorder, panic attacks and had extreme difficulty with social interaction. To accommodate the disability, the student requested that the master's program at the university be made available to him through distance learning. The admissions committee opined that the delivery of the program in that manner would alter the design of the program to the extent that it would have to be developed and approved by the state education department prior to implementation. The university did offer the student several other accommodations such as bringing a friend or advisor to class for support or allowing the student access to a separate vacant room if he felt anxious. The court found that the student failed to show that his requested accommodations were reasonable, and the court noted that the university had offered reasonable alternatives.

When students apply to colleges or other post-secondary education programs, they may obtain accommodations but they often must provide documentation from a qualified professional documenting the disability. A prospective student may choose to, but is not obligated to, provide the school with information about the disability. The disclosure of a disability is strictly voluntary. If a student would like to take advantage of academic adjustments, he or she should tell the school as soon as possible that he or she needs the accommodations. It is very important for a student and family to be proactive.

Post-secondary education programs are not required to pay for testing to prove a student has a disability so it is important that the family obtain the necessary testing prior to the time the student leaves high school. The school district may conduct the testing, which will minimize the cost to the family. If a child uses assistive technology in high school, the family should speak to the school district about the possibility of purchasing the equipment. The post-secondary program can not charge a student for the accommodations but they are allowed to ask for testing, evaluations, etc., to prove the need for the accommodation.

Although the IDEA does not extend to post-secondary education, there are some protections afforded under the IDEA that can assist with transition issues. The purpose of IDEA is to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and *prepare them for further education, employment and independent living*. In fact, the IDEA defines and provides for the implementation of transition services. In essence, transition planning for students with disabilities should began many years before the child leaves high school.

Because our firm practices in the area of special education law in addition to special needs planning and guardianship, we are able to work with families to ensure that school districts are providing transition planning to children with special needs. For those practitioners who do not focus on special education law as a part of their practice, I believe that you must raise the issue to be sure that families are aware of the need to plan for post-secondary activities and address whether the school district has appropriately addressed this issue.

Transition planning can take many forms. A student can seek accommodations in college. For special needs children, the attorney should assess whether a child needs a guardianship or whether that child can sign advance directives. When I speak to families of children approaching the age of 18, I stress the need for a competent young person to have advance directives in place. I tell the story of my 18-year-old daughter who left for college in Buffalo, New York, and unfortunately was in an accident. She had to make a trip to the emergency room while she was away. She did not have a health care directive in place and therefore I was unable to obtain information from the doctor until my daughter was able to give her permission. As you can imagine, during her next visit home, we immediately arranged for her to sign a health care proxy and power of attorney. Every practitioner should inquire whether a client's children over the age of 18 have advance directives in place. Parents are extremely thankful for the inquiry. For a child with disabilities going off to college, advance directives can serve many purposes. The young person can feel empowered but still have the security of knowing that a parent or other trusted agent can assist with decisions if need be.

A child with disabilities should apply for supplemental security income (SSI) and the services of Vocational and Educational Services for Individuals with Disabilities (VESID). In New York, VESID may be able to provide additional supports to young adults entering the workforce or post-secondary education. The Office of Mental Retardation and Developmental Disabilities (OMRDD) can offer some supports under

their waiver programs and explore housing options for individuals with disabilities. Practitioners should advise clients to seek over-age dependant health coverage for children with disabilities under a parent's private health insurance policy. A determination by the Social Security Administration of disability and a doctor's affidavit is usually enough to secure coverage. Families can seek out information from private organizations that support the needs of individuals with disabilities in obtaining supported employment options. Many agencies offer job coaches and sheltered workshop alternatives. I encourage practitioners to keep a resource library of resources in their offices.

It is important to remember that the most important aspect of transition planning is to encourage the young person with disabilities to learn self-advocacy. This can happen in different ways. A student with a disability controlled by medication should learn to self-medicate. A student with mental illness should learn the warning signs of an onset and be able to seek out the appropriate help quickly. A student with physical disabilities should take time to research programs that are easily accessible and open to the needs of such a student. Students with disabilities should seek out advisors and professionals to assist them secure the necessary supports. Parents and caregivers should strive to make the young person as independent as possible.

Finally, the most obvious assistance we can offer as special needs planning attorneys is to assist a family in protecting the child's ability to secure government benefits, through the use of proper estate planning and special needs trusts. We need to work with families to determine the cost of providing care for the child throughout the child's lifetime. Once we analyze the needs of the child and the cost of care, we can develop a life plan. This is all part of transition planning and the families you serve will recognize and appreciate your attention to the issues they face.

As always, I welcome your comments and suggestions for future articles.

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