

9th Circuit Decision

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November 8, 2013

**PROVIDING SPECIAL EDUCATION
SERVICES TO STUDENTS WITH
DISABILITIES THROUGH AGE 21**

Case Background

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- Act 163, HRS 302A-1124(c) stated, “No student who is 20 years of age or over on the first instructional day of the school year shall be eligible to attend public school. If a person reaches 20 years of age after the first instructional day of the school year, the person shall be eligible to attend public school for the full school year.”

Case Background (cont.)

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- In addition to conventional public high schools, HIDOE operates a network of adult-education schools, the Community Schools for Adults (CSA).
- CSA offers two diploma programs: General Education Development (GED) and Competency Based (CB)

Case Background (cont.)

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- While the IDEA requires states to provide a free appropriate public education (FAPE) to all students with disabilities between the ages of 3 and 21, it also allows states to lower age eligibility to 18-20 on the condition that the state also applies the same age limit to non-disabled students.
- The court ruled that the GED and CB programs constituted public education for nondisabled students and meet the definition of secondary education programs.

Case Background (cont.)

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“The DOE offers, at taxpayer expense, the opportunity for nondisabled 20- and 21-year-olds to complete their secondary educations and earn high school diplomas. Providing IDEA services to disabled children of those ages would therefore be consistent with ‘State law or practice...respecting the provision of public education,’ **so the state must do so.**” 20 U.S.C. § 1412(a)(1)(B)(I).

Implications of Case

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The state must continue to provide
FAPE to disabled students who
have not yet attained the age of 22.

Who May Come Back?

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- Any disabled student who has not been issued a diploma by the DOE, and has not yet reached age 22, is eligible to receive special education and related services.
- Students who are 22 or older may come back seeking compensatory services.
 - Schools should take their names & contact information and inform their District Educational Specialist (DES).

Responding to Inquiries

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- Students who previously aged out under Act 163 and would like to receive Special Education services, should be instructed to contact their home school.
- If Student is under 22 years of age, he/she will need to re-enroll at his/her home school.
- If student is over 22 years of age and is seeking compensatory education, take down Student's name and current contact information including phone # and address. This information is to be provided to the DES.

Enrollment of New Students Over the Age of 20

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- If student is new to the school, the same enrollment processes should be followed based on procedures for all students. For example, no student may start classes/services until the day after he/she enrolls, proof of residency, etc.
- Since these enrolling students will be adult students, schools must obtain documentation of the authority to make educational decisions if someone other than the student is handling the enrollment, Individualize Education Program (IEP), etc.

Enrollment of Out of State Students Over the Age of 20

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- Out of state students cannot be enrolled if they have a high school diploma.
- If Student under the age of 22, has come from another state with an IEP, FAPE must be provided, including services comparable to those in the previous IEP, while an assessment under Ch 60 is conducted.
- To facilitate an in-state or out-of-state transfer, the new school must take steps to promptly obtain the student's records, including the IEP and any supporting documents from the previous school at which Student was enrolled.

Interim IEP/Use of Diagnostic Placement

- The development of an interim IEP and/or use of a diagnostic placement, may be appropriate for a student with a disability if there is question about the student's special education or related services needs.
 - In certain cases of **initial eligibility determinations**, a student may require a temporary placement in a program as a part of the evaluation process.
 - A school should not use an interim IEP to circumvent IDEA requirements or timelines

Interim IEP/Use of Diagnostic Placement

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- If it is determined that the student will be placed in a program during the duration of the evaluation process, schools should follow this 4 step procedure:
 1. Develop an interim IEP for the student that sets out the specific conditions and timelines for the trial placement
 2. Ensure that the adult student or parents agree to the interim placement before it is carried out, and that they are involved in developing, reviewing and revising the IEP.
 3. Set a specific timeline (e.g., 30 days) for completing the evaluation and making judgments about the most appropriate placement for the student.
 4. Conduct the IEP meeting at the end of the trial period in order to finalize the student's IEP.

Re-enrollment of Students Who Previously Aged Out Under Act 163

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- If a student who previously aged out under Act 163, would like to receive special education services, he/she will need to re-enroll at a DOE school and school should notify the DES.
- Once a student re-enrolls, the school will need to convene an IEP meeting as soon as possible.

What About the IEP?

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- When a student re-enrolls, the IEP team should hold an IEP meeting as soon as possible to review the IEP and revise as necessary.
- Schools must develop a current IEP and begin to provide services even if a re-evaluation is needed.

When Do Services End?

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- Services end the day before the student turns 22.
- If Student's 22nd birthday falls on a weekend or holiday, services will cease the last instructional day prior to the weekend and/or holiday.

Considerations

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- Some of the students are already participating in adult programs with other state agencies.
- Students and their parents should discuss the implications of re-enrolling in school with the case manager from that agency.

Reminders

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- An updated Summary of Performance and prior written notice (PWN) must be provided for students who age-out at 22 or receive a diploma.
- Focus on the identification of potential post-high school services and student readiness in the areas of:
 - Further education/training
 - Employment
 - Independent living