GET READY, HERE IT COMES:
GRADUATION AND STUDENTS
WITH DISABILITIES

ILLINOIS ALLIANCE OF ADMINISTRATORS OF
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SWD Graduation Rates
(National Center for Education Statistics)

I. IDEA/ILLINOIS REGULATORY
PROVISIONS ON GRADUATION

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Graduation of students with disabilities is addressed primarily within the context of IDEA’s provisions on:

- FAPE requirements and limitations (i.e., 20 U.S.C. §1412(a)(1)(B) and 34 C.F.R. §300.102(a)(ii)); and
- Requirements for evaluations and reevaluations (i.e., 20 U.S.C. §1414(c)(5)(B) and 34 C.F.R. §300.305(e)).

**IDEA/REGULATORY PROVISIONS ON GRADUATION**

Illinois Regulations (23 Ill. Admin. Code 226.50(c)):

- If the student’s IEP calls for special education, transition planning, transition services or related services beyond the point of graduation, the diploma shall be deferred so the student will remain eligible for services.
- If the student is to receive a regular high school diploma, at least one year before both the parent and the student must
  - receive written notification, one year in advance, stating that eligibility for special education services will end when diploma is granted; and
  - the parent or eligible student may request an IEP meeting to review the recommendation.
Illinois Regulations (23 Ill. Admin. Code 226.50(c)):

- Students who participate in a graduation ceremony but have not been issued a regular high school diploma remain eligible for receive FAPE through age 21, inclusive.

A. GRADUATION AND FAPE REQUIREMENTS/LIMITATIONS

The obligation to make FAPE available to all children with disabilities (i.e., those residing in the state and between the ages of 3 and 21, inclusive) does not apply with respect to children with disabilities who have graduated from high school with a regular high school diploma.
This exception to the FAPE requirement does not apply to children who have graduated from high school but have not been awarded a regular high school diploma. “Regular high school diploma” does not include an alternative degree that is not fully aligned with a state’s academic standards – e.g., a certificate or a general educational development (“GED”) credential.

Graduation from high school with a regular high school diploma constitutes a change in placement that requires prior written notice that meets the requirements of §300.503 of the regulations.

**B. GRADUATION AND REEVALUATION REQUIREMENTS**
Although a reevaluation is required before a district determines that a student is no longer IDEA-eligible, a reevaluation is not required when termination of eligibility is due to graduation from secondary school with a regular diploma (or when a child ages out of IDEA eligibility). However, when eligibility ends due to graduation with a regular diploma, a summary of the student’s academic achievement and functional performance must be provided by the district.

The issuance of a GED or alternative diploma to a student does not trigger the requirement to provide him with a summary of academic achievement and functional performance. Questions and Answers on Secondary Transition, 52 IDELR 230 (OSERS 2009).

DOE’s comments to §300.305(e) IDEA regulations indicate that school districts are not required to conduct evaluations for a student to meet the entrance or eligibility requirements of another institution or agency – that is, IDEA does not require districts to assess a student with a disability to determine his/her eligibility relative to other agencies (e.g., vocational rehabilitation programs) or a college or other post-secondary setting.
II. DETERMINING WHETHER A SWD IS READY TO GRADUATE

STATE LAW, NOT THE IDEA, DICTATES THE SUBSTANTIVE STANDARDS FOR GRADUATION OF STUDENTS (INCLUDING STUDENTS WITH DISABILITIES). *Letter to Anonymous*, 22 IDELR 456 (OSEP 1994). See also *Letter to Florida*, 102 LRP 37673 (OCR 03/27/01): States and school districts have the authority to formulate general graduation and diploma requirements applicable to all students (including students with disabilities) without running afoul of the non-discrimination provisions of Section 504 and the ADA.
A student’s achievement of IEP goals does not automatically obligate a school district to award the student a regular high school diploma if the student has not met state and local requirements for graduation. *Special School District of St. Louis County (MO)*, 16 IDELR 307 (OCR 1989).

DETERMINING WHETHER A SWD IS READY TO GRADUATE

However, when it comes to students with disabilities, case law reflects that meeting all general graduation and diploma requirements does not, by itself, necessarily justify graduation. For example:

Graduation of students, based on accumulation of required credits but not on their progress on IEP goals and objectives, was improper. See *Quabbin Regional School District*, 44 IDELR 56 (SEA MA 2005); *Black River Falls School District*, 40 IDELR 163 (SEA WI 2004); *Kevin T. v. Elmhurst Community School District*, 36 IDELR 153 (N.D. Ill. 2002).

A SWD must meet the general graduation requirements in order to graduate:

- See *Tacoma School District*, 64 IDELR 28 (SEA WA 4/12/14): A district’s decision to graduate a special education student who did not complete the required math credits or pass the reading proficiency exam was in violation of IDEA.
But see:
- *Newport-Mesa Unified School District*, 110 LRP 73203 (SEA CA 2010): Despite parent’s desire for ongoing related services for her child, the district was not obligated to continue programming for a student with a disability who met state-established criteria for graduation with a regular high school diploma.

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- *Girard School District*, 37 IDELR 298 (SEA PA 2002): A district’s decision to graduate a student was upheld where evidence showed that she earned all required credits, the IEP team decided that acquisition of credits would determine graduation, and the parent did not challenge this decision until she learned that the student’s insurance coverage would end if she was not in school.

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See also *Sammons v. Polk County School Board*, 108 LRP 23639 (M.D. Fla. 04/22/05): Graduation of student with a disability who earned all of his academic credits was proper, despite private psychologist’s opinion that he should not have earned the credits due to allegedly poor analytical and writing skills.
### DETERMINING WHETHER A SWD IS READY TO GRADUATE

Hearing officers have recognized that a school district may establish individualized graduation criteria for a student with disabilities based on the student’s unique needs and include them in the IEP. See, *e.g.*, *West Milford Township Board of Education*, 106 LRP 1015 (SEA NJ 06/17/05); *Marple Newton School District*, 104 LRP 13478 (SEA PA 03/05/04); *Flour Bluff Independent School District*, 37 IDELR 47 (SEA TX 2002).

### DETERMINING WHETHER A SWD IS READY TO GRADUATE

This may include modifying or adjusting general graduation requirements. See, *e.g.*, *Letter to Florida*, 102 LRP 37673 (OCR 03/27/01); *St. John’s County (FL) School District*, 58 IDELR 83 (OCR 2011).

### DETERMINING WHETHER A SWD IS READY TO GRADUATE

OCR has also indicated that “[u]nder Section 504 and [the ADA], the student’s most recent IEP should anticipate the student’s graduation by describing the criteria that must be met by the student in order to do so.” *Letter to Runkel*, 25 IDELR 387 (OCR 1996).
MUST A STUDENT WITH A DISABILITY ACHIEVE ALL OF HER IEP GOALS IN ORDER TO GRADUATE?

DETERMINING WHETHER A SWD IS READY TO GRADUATE

Again, case law on this issue varies. For example:

- An IEP meeting should be convened prior to the graduation of a student with a disability who is expected to receive a regular high school diploma in order to ensure that graduation requirements, as well as the goals and other requirements of the IEP, have been met. *Letter to Richards*, 17 IDELR 288 (OSERS 1990).

DETERMINING WHETHER A SWD IS READY TO GRADUATE

- Section 504 and the ADA would not prohibit a state or school district from deciding to award a regular high school diploma to a student with a disability based on achievement of IEP goals. *Letter to Runkel*, 25 IDELR 387 (OCR 1996).
DETERMINING WHETHER A SWD IS READY TO GRADUATE

But see some case examples where the key was whether the district provided FAPE and the student made sufficient progress:

- Graduation of student with disability, who had an “admirable academic career” and made progress in written expression, was proper, despite his ongoing deficiencies in writing and spelling. *Klein Indep. School District v. Hovem*, 59 IDELR 121 (5th Cir. 2012), *cert denied*, 113 LRP 10911 (03/18/13).

DETERMINING WHETHER A SWD IS READY TO GRADUATE

- Despite district’s significant delay in drafting transition goals for the student, delay did not result in loss of educational benefit where he met or progressed toward the transition goals, earned credits for graduation, and was accepted at community college. *Tindell v. Evansville-Vanderburgh School Corporation*, 57 IDELR 71 (S.D. Ind. 2011).

DETERMINING WHETHER A SWD IS READY TO GRADUATE

- Where the district provided a student with a reasonably calculated IEP, from which he derived educational benefit and made sufficient progress toward most but not all of his IEP goals, graduation was proper. *Doe v. Marlborough Public Schools*, 54 IDELR 283 (D. Mass. 2010).
Graduation was upheld where student met state requirements, made progress under his IEP, and the district made a “reasonable effort” to advance him. *Montgomery County Public Schools*, 22 IDELR 754 (SEA MD 1995).

Student who attained required academic credits but failed to achieve goals on interpersonal skills was properly graduated. *In re Child with Disability*, 401 IDELR 220 (SEA VA 1988).

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The IEP team should also consider the options available to the student in making a graduation decision.


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A 20-year-old student, upon his parents’ advice, refused to consent to a triennial reevaluation during his senior year of high school. The school district subsequently held a meeting to discuss the student’s IEP, his progress, and his educational options for the following year.
The IEP team discussed three options for the coming school year in detail with the student and his parents:

(1) Attend math and reading courses at the high school for a half day, if the student consented to a case study evaluation, and attend a vocational program for a half day;

(2) Attend the district’s transitional program; or

(3) Graduate from high school and enroll in vocational classes at the community college.

The student declined the first option, and school members of the IEP team concluded that the second option was inappropriate because he had already mastered the skills taught in the transition curriculum. Ultimately, the IEP team recommended that the student graduate and attend community college.

The student earned sufficient credits to graduate and participated in the school district’s graduation ceremony. However, the next school year, the parents attempted to re-enroll the student in the district, then filed for due process when the district refused.

Were the district’s graduation and re-enrollment decisions correct?
III. DIPLOMA OPTIONS AND ISSUES

While the IDEA does not require that all students with disabilities receive a regular high school diploma, students with disabilities may not be denied diplomas if they meet state and local proficiency standards. Letter to Anonymous, 22 IDELR 456 (OSEP 1994); Letter to Anonymous, 25 IDELR 632 (OSEP 1996).

DIPLOMA OPTIONS AND ISSUES

An alternative degree (e.g., a certificate of attendance or completion, special education diploma, or GED) that is not fully aligned with a state’s academic standards may be utilized for students with disabilities who are unable to meet the state’s standards. For example:
Moffat County (CO) School District RE-1, 26 IDELR 28 (OCR 1996): OCR approved a school district’s new policy that provided that all students who completed a specified number of high school credits and passed a state proficiency examination would receive a “Guaranteed” diploma; a different diploma would be awarded to all students who completed the required credits but did not pass the state proficiency examination.

Salem-Keizer School District, 30 IDELR 1024 (SEA OR 1999): District properly determined that student with intellectual disability should receive a “certificate of attainment,” rather than a “standard” or “alternate” diploma.

However, a school district must notify parents in advance if successful completion of their child’s IEP will not result in attainment of a regular high school diploma, so that the parents may exercise their due process rights to challenge the district’s decision. Special School District of St. Louis County (MO), 16 IDELR 307 (OCR 1989).
IV. PROCEDURAL SAFEGUARDS AND GRADUATION

A. UNDER THE IDEA

High school graduation with a regular diploma is a change in placement that brings the IDEA’s procedural safeguards, including prior written notice to parents and access to due process hearing procedures, into play. See Letter to Richards, 17 IDELR 288 (OSERS 1990); Olson v. Robbinsdale Area Schools, 41 IDELR 89 (D. Minn. 2004).
Graduation from middle school to high school does not trigger the IDEA’s prior written notice requirement. See, e.g., Glendale Unified School District, 105 LRP 19420 (SEA CA 03/11/05).

While no reevaluation is required prior to termination of a student’s IDEA eligibility due to graduation with a regular high school diploma, districts must provide such students with a summary of academic achievement and functional performance, including recommendations on how to assist the student in meeting his post-secondary goals.

B. UNDER SECTION 504
Graduation is a “significant change in placement” under Section 504. Although Section 504 generally requires a reevaluation prior to any significant change in placement, OCR has indicated that this is not the case when the change is due to graduation. See Letter to Runkel, 25 IDELR 387 (1996).

Under Section 504, districts are permitted, but not required, to provide parents with a procedural safeguards notice prior to a student’s graduation. See Letter to Runkel, 25 IDELR 387 (1996).

However, districts are required to provide notice to parents in advance if they plan to award an alternative diploma to a student with a disability. Special School District of St. Louis County (MO), 16 IDELR 307 (OCR 1989).
V. GRADUATION CEREMONIES

A. PARTICIPATION BY STUDENTS WITH DISABILITIES

Qualified students with disabilities are eligible to participate in whatever graduation ceremony that same-age, non-disabled students participate in, and eligible students with disabilities may not be precluded from participating in a district’s main graduation ceremony if they wish to do so. Letter to Runkel, 25 IDELR 387 (OCR 1996).
See, e.g., *Aldine (TX) Independent School District*, 16 IDELR 1411 (OCR 1990): A school district violated Section 504’s prohibition against discrimination by scheduling a different graduation ceremony for students with disabilities who were receiving their IEP services in a separate facility on a different date and at a different location than the graduation ceremonies being held for other students.

But see *Carlynton (PA) School District*, 49 IDELR 202 (OCR 2007): A student with a disability, whose IEP placement was a behavioral center, was excluded from the graduation ceremony at his home school because attendance at that school was required for participation in the ceremony. OCR determined that this did not constitute discrimination under Section 504.

What about students with disabilities who have completed four years of high school attendance but are not graduating?

This issue is not addressed in the *IDEA* and is generally a matter of state or local law or policy.
In Illinois, the “Brittany’s Law” provision of the School Code requires that districts that operate a high school must have a policy and procedures that allow a SWD who has completed 4 years of high school to participate in the graduation ceremony of his/her high school graduating class if he/she is to continue receiving special education services.

Parents and students must be given “timely and meaningful notice” of this policy and procedures.

B. ACCESSIBILITY AND RELATED ISSUES

HOW WOULD YOU ADDRESS THESE SITUATIONS?
Your district’s graduation ceremony is scheduled for June 3. On May 24, you get an e-mail:

- From a teacher, who tells you that Johnny, a graduating student with ED and a history of behavioral problems, has had a bad couple of weeks and is likely to be disruptive at the graduation ceremony; or

From the parent of Susie, a graduating student with an orthopedic impairment, who tells you that she assumed that the graduation ceremony would be indoors at the district’s accessible gymnasium but just realized that it’s been moved outdoors this year to the athletic field, which is uneven and will be difficult for the student to navigate with her walker.

First and foremost, a student’s IEP should serve as a district’s guide for which accommodations or supports he will need to participate in graduation activities.
It’s also important to keep in mind that the physical accessibility standards of Section 504 and the ADA apply to graduation ceremonies, and planning for an accessible venue should be done far in advance.

Examples of districts that violated 504 and the ADA by not making their graduation ceremonies accessible include:

- **King Phillip (MA) Regional School District**, 59 IDELR 19 (OCR 2012): Graduation ceremony was held outdoors on a grassy field that was not accessible to a student in a wheelchair. The district constructed a special seating area and a laminate pathway and gave the student an opportunity to test it out before the ceremony but, due to the instability of the pathway, the wheelchair slipped off the edge and onto the grass as the student was moving to accept his diploma.

- **Coventry (RI) Public Schools**, 20 IDELR 1081 (OCR 1993): District violated Section 504 and the ADA by holding its graduation ceremony in a theater that was not accessible to students with disabilities.
C. EXCLUSION FROM GRADUATION CEREMONIES DUE TO SWD MISCONDUCT

The IDEA and Section 504 do not expressly prohibit a district from excluding a student from a graduation ceremony as a disciplinary consequence for misconduct.

A disciplinary exclusion of a student with a disability from a graduation ceremony does not constitute a “change in placement,” nor does it trigger a district’s obligation to conduct a manifestation determination.

District decisions to punish a student for misconduct by excluding the student from participating in a graduation ceremony have often withstood legal challenges, for example:
EXCLUSION FROM GRADUATION CEREMONIES DUE TO SWD MISCONDUCT

**Jefferson County Board of Education, 56 IDELR 300 (N.D. Ala. 2011):** Student with a disability was expelled for a year for bringing a gun to school, and the district agreed to pay for him to attend a private school during the expulsion period. The parent requested that the district continue the placement at the private school after the expulsion ended and allow him to participate in the district’s graduation ceremony as a senior. The district agreed to maintain the private placement but, in March of his senior year, decided that the student could not participate in graduation. The court upheld this decision.

EXCLUSION FROM GRADUATION CEREMONIES DUE TO SWD MISCONDUCT

**Board of Education of Arlington Heights School District No. 25 v. Illinois State Board of Education, 35 IDELR 6 (N.D. Ill. 2001):** Barring an 8th-grade student with a disability from participating in a graduation ceremony was a “minor disciplinary action” that did not require parental involvement and “obviously did not deny [her] a FAPE.”

EXCLUSION FROM GRADUATION CEREMONIES DUE TO SWD MISCONDUCT

Also see, e.g., Forsyth County (NC) School District, 26 IDELR 757 (OCR 1997) and Turlock (CA) Joint High School District, 29 IDELR 985 (OCR 1998), where districts’ decisions to exclude students with disabilities from participating in commencement activities as a result of their misconduct did not violate Section 504.
EXCLUSION FROM GRADUATION CEREMONIES DUE TO SWD MISCONDUCT

But see, e.g., Boston Public Schools, 35 IDELR 177 (SEA MA 2001): Hearing officer concluded that the district did not prove that a student, who wrote that he planned to “blow up the school” in his journal, posed a danger to himself or others such that excluding him from graduation was justified. The district was ordered to let the student participate and to take whatever precautions were necessary to assure safety during the graduation ceremony.

VI. GRADUATION-RELATED DISPUTES

A. GRADUATION AND FAPE CLAIMS
Although graduation with a regular high school diploma terminates a student’s eligibility for FAPE under the IDEA, it is well-settled law that graduation with a regular high school diploma does not relieve a school district of its obligation to remedy a pre-graduation denial of FAPE with compensatory education.

See, e.g., Letter to Riffel, 33 IDELR 188 (OSEP 2000); Brett v. Goshen Community School Corporation, 35 IDELR 152 (N.D. Ill. 2001); Maine School Administrative District No. 35 v. Mr. and Mrs. R., 38 IDELR 151 1st Cir. 2003); San Dieguito Union High School District v. Guray-Jacobs, 44 IDELR 189 (S.D. Cal. 2005); Pennsbury School District, 48 IDELR 262 (SEA PA 2007).

However, there has been at least one reported decision where a student's graduation rendered a subsequent due process claim moot. See, e.g., Board of Education of Oak Park & River Forest High School District 200 v. Nathan R., 31 IDELR 182 (7th Cir. 2000): Expelled special education student started due process action to challenge the district’s manifestation determination and refusal to provide him with services during his expulsion, but case did not make it to U.S. Court of Appeals for the 7th Circuit on appeal until after he graduated. Therefore, case was moot.
But see, e.g., C.M. v. Board of Education of the Union County Regional High School District, 43 IDELR 55 (3d Cir. 2005): Court distinguished the 7th Circuit’s ruling in Nathan R. and held that graduation did not make the student’s FAPE claims moot.

Post-graduation FAPE claims have been extensive, and rulings have been varied, for example:

- **Thornton Fractional Township High School District #128**, 36 IDELR 282 (SEA IL 2002): Although the student with SLD graduated with a regular high school diploma, he was entitled to compensatory tutoring services from an LD specialist due to the district’s failure to evaluate and offer him an appropriate IEP and transition plan.

- **Dauherty v. Hamilton County Schools**, 26 IDELR 127 (E.D. Tenn. 1997): Student with ED graduated from an out-of-state residential school and received a regular high school diploma. The parents’ challenge to the graduation and request for compensatory education (i.e., through continued residential placement of the student at district expense) was denied.
If a challenge is made to a student’s graduation, does IDEA’s “stay-put” requirement apply while the dispute is pending?

Here, too, there have been many cases on the issue with mixed outcomes:

- For students who have not yet reached the maximum age of IDEA eligibility, courts generally find that a dispute over graduation does not implicate the “stay-put” provision. See, e.g., Kevin T. v. Elmhurst School District, 34 IDELR 202 (N.D. Ill. 2001); Sammons v. Polk County School Board, 45 IDELR 7 (M.D. Fla. 2006).

See also Albuquerque Public Schools, 113 LRP 3768 (SEA NM 2013): Student with disability who disputed his graduation from high school in Texas and then moved to New Mexico could not void the graduation via a due process action against the New Mexico school district where he resided.
For students who have reached the maximum age of IDEA eligibility, however, rulings have been more unpredictable, for example:

- In cases such as B.A.W. v. East Orange Board of Education, 55 IDELR 76 (D.N.J. 2010), R.Y. v. Hawaii, 54 IDELR 4 (D. Hawaii 2010), Carl B. v. Mundelein High School District 120 Board of Education, 28 IDELR 263 (N.D. Ill. 1993), and Cronin v. Board of Education of East Ramapo Central School District, 689 F.Supp. 197 (S.D.N.Y. 1988), the courts held that IDEA’s stay-put rule did require the districts to continue the student’s education during the pendency of the dispute.

GRADUATION AND FAPE CLAIMS

- In cases such as Hilden v. Lake Oswego School District No. 7J, 21 IDELR 671 (D. Ore. 1994) and Wayne County Regional Educational Service Agency v. Pappas, 30 IDELR 676 (E.D. Mich. 1999), the stay-put requirement did not apply during the pendency of a graduation dispute.

If a challenge is made to a student’s graduation, does a hearing officer have the authority to order or rescind the student’s graduation?
Decisions that address whether a hearing officer has authority to order a district to graduate a student with a disability and award her a diploma are quite limited. See, e.g., Hills v. Lamar County School District, 49 IDELR 188 (S.D. Miss. 2008): Student, who admitted that he had excessive absences and subsequently dropped out of high school because he “just got sick of it,” sought order requiring district to give him a completed transcript and certificate of graduation.

The court rejected this request and found that his failure to graduate was not caused by the district’s alleged IDEA violations, but by his decision to withdraw from school in his senior year. “The fact that [the student] simply desired his grades changed and to be given a diploma is not a remedy under the IDEA.”

But see, e.g., Oyster River Cooperative School District, 110 LRP 33121 (SEA NH 2010): District was ordered to defer student’s graduation from January until June since his transition goals were not met and he had classes to finish.
On the other hand, there are many cases in which hearing officers and courts have been asked by students with disabilities to rescind their diplomas, for example:

- In cases such as Cedarburg School District, 36 IDELR 220 (SEA WI 2002), Espanola Public Schools, 105 LRP 44611 (SEA NM 2003), and Quabbin Regional School District, 44 IDELR 56 (SEA MA 2005), hearing officers directed school districts to rescind student diplomas.

In cases such as Puffer v. Raynolds, 17 IDELR 618 (D. Mass. 1988), requests to rescind a student’s graduation and diploma have been denied (in Puffer, because doing so would have interfered with the student’s post-secondary education, and she was better served by receiving compensatory services from the school district).

VII. GRADUATION AND POTENTIAL FERPA/TRANSCRIPT ISSUES
WITH GRADUATION COMES TRANSCRIPTS, WHICH CAN RAISE A NUMBER OF FERPA ISSUES OF WHICH SCHOOL DISTRICTS SHOULD BE AWARE.

The most recent DOE guidance on this issue is *In re: Report Cards and Transcripts for Students with Disabilities*, 51 IDELR 50 (OCR 2008). According to OCR, transcripts for students with disabilities:

- May not indicate that the student has a disability, has been enrolled in a special education program, or has received special education and related services;
- May, under certain circumstances, indicate a student’s receipt of a certificate of attendance or a similar document, rather than a regular diploma;
GRADUATION AND POTENTIAL FERPA/TRANSCRIPT ISSUES

- Generally may indicate, either through specific notations or the use of asterisks or other symbols, that the student took classes with a modified or alternate education curriculum;

- But generally may not include special notations, including asterisks or other symbols to reflect that the student received accommodations in general education curriculum classes.

QUESTIONS

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