RELATED SERVICES, ASSISTIVE TECHNOLOGY, AND TRANSITION SERVICES UNDER THE *INDIVIDUALS WITH DISABILITIES EDUCATION ACT*

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A key component of the Individuals with Disabilities Education Act (IDEA) requires school boards in the United States to provide related services to assistive technology and transition services to students with disabilities who need these to benefit from their special education programs. The IDEA defines related services as including transportation and such developmental, corrective and supportive services as speech-language pathology and audiology, interpreting, psychological services, physical and occupational therapy, recreation (including therapeutic recreation), social work, school nursing, counseling (including rehabilitation counseling), orientation and mobility services, and medical services for diagnostic and evaluation purposes. This article recognizes that the laws of special education in Australia and New Zealand provide services similar to those mandated in the IDEA. As such, this article offers an overview of the related services provisions in the IDEA to provide food for thought for educators and their attorneys regardless of where they work. Against this background, the first three sections of this article analyze the IDEA and litigation over an array of related services, assistive technology, and transition services for students who are preparing to leave school. The final part of the article offers guidelines for educational leaders and attorneys where school or governing boards must provide these essential services for students with disabilities. The article ends with a brief conclusion.

I INTRODUCTION

A key component of the *Individuals with Disabilities Education Act* (*IDEA*)[1] requires school boards in the United States to provide 'special education and related services, and aids and supports in the regular classroom, to [students with disabilities], whenever appropriate'[2] to help them to benefit from the education provided under their Individualized Education Plans (IEPs). According to the *IDEA*:

> The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only).

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The *IDEA* also requires boards to provide assistive technology[4] and transition services[5] to help students with disabilities complete their educations

The list of related services is exemplary, not exhaustive Even so, Congress placed limits on what can be related services such that medical services, for instance are exempted unless they are for diagnostic or evaluative purposes[6] In *Irving Independent School District v Tatro*[7] the United States Supreme Court placed two key limits on the duties of school boards to provide related services First, the Court insisted that 'to be entitled to related services, a child must be [disabled] so as to require special education'[8] The Court pointed out that absent a disability requiring special education, 'the need for what otherwise might qualify as a related service does not create an obligation under the Act'[9] Second, the Court decided that only services necessary to aid children with disabilities to benefit from special education must be provided, regardless of how easily such services could be furnished Thus students who receive a 'free appropriate public education' (FAPE) under their IEPs without related services are not entitled to such aids An expansive term a FAPE suggests that to the extent possible, children with disabilities should be educated alongside their peers who are not disabled[10]

This article recognizes that although they differ, the special education laws in Australia[11] and New Zealand[12] provide services similar to those mandated in the *IDEA* As such, rather than engage in a comparative analysis of the laws in Australia, New Zealand the United States, and other nations around the world, this article offers an overview of the expansive overlapping related services, assistive technology, and transition services provisions in the United States as mandated in the *IDEA* as food for thought for educators and their attorneys regardless of where they serve

Against this background, the first substantive section of this article analyzes the *IDEA* and litigation over an array of related services transportation, counseling, psychological, and social work, physical, occupational, anc speech therapy, recreation and enrichment programs, nursing, diagnostic and evaluative services, cochlear mapping, counseling and parent training, and residential placements and lodging The third and fourth parts of this article review the *IDEA* and litigation about assistive technology and transition services for students who are preparing to leave school The final part of the article offers guidelines for educators and their lawyers where school or governing boards must provide related services, assistive technology and/or transition services for students with disabilities The article ends with a brief conclusion

II Related Services

A *Generally*

The *IDEA*'s regulations define each of the identified related services in detail[13] To the extent that these definitions are not exhaustive, services other than those that are specifically exempted may be considered related services if they can assist students with disabilities in benefiting from special education For example services such as artistic and cultural programs or art, music, and dance therapy could be related services under the appropriate circumstances[14] These related services may be provided by persons of differing professional backgrounds with a variety of occupational titles

B *Transportation*

It almost goes without saying that students cannot benefit from their IEPs if they are unable to get to school. Transportation, probably the most common related service that boards offer to students with disabilities in the US, is typically provided in board-owned and operated vehicles, in vehicles owned and operated by private service providers, and/or via public transportation; in rare instances, boards may enter into contracts with parents to transport their children to school. School officials need to make special arrangements when students are unable to access their usual modes of transportation. The term transportation, as used in the *IDEA* and its regulations, covers travel to and from school, between schools, and around school buildings. Specialized equipment, such as adapted busses, lifts, and ramps, is required when needed to provide students with transportation.[15]

An early case from Rhode Island demonstrates that transportation includes transit from a house to a vehicle. When school officials refused to provide assistance for a child with physical disabilities who was unable to get from his home to a school bus without help, his father drove him to school for a while. When the father could no longer take his son to school, the child stopped attending classes. Ruling that school officials had the duty to provide transportation, the court awarded the parents compensation for their efforts in taking their son to school.[16] As important as transportation is, though, door-to-door service is required only when students are unable to get to school without such assistance.[17]

If IEP teams place students in private schools, then these children are entitled to transportation.[18] Should students attend residential schools, they must be transported between their homes and schools for usual vacation periods. Regardless, an appellate court in Florida affirmed that a student was not entitled to additional trips home for therapeutic purposes even though improved family relations was a goal of his IEP.[19] The court explained that a hearing officer did not abuse his discretion in rejecting a parental request for reimbursement for more than three annual round trips from their home in Florida to a facility in Georgia because the board met its obligation to provide the child with transportation.

Boards may not be required to provide transportation when parents elect to send their children to schools other than the ones recommended by educators. In such a case, an appellate court in Florida held that a board was not obligated to transport a student whose parents enrolled her in a geographically distant facility.[20] The court observed that transportation was unnecessary because the student could have received a FAPE at a school closer to her home.

Today, many students do not return home after school; instead, they go to after school caretakers. In a case from Texas, the Fifth Circuit determined that students with disabilities are entitled to transportation to their caretakers even if those persons are outside of district attendance boundaries.[21] The court ruled that the parental request for transporting their son, who had multiple disabilities, to his caretaker was reasonable and did not place a burden on the board.

On the other hand, the Eighth Circuit reasoned that a special education student from South Dakota was not entitled to be dropped off at a day care center that was outside of her school's attendance area.[22] The board's policy dictated that children could be dropped off only within their schools' attendance boundaries. The court, viewing the policy as facially neutral, and that the parental request was based on personal convenience rather than the student's educational needs, affirmed that the board did not violate the *IDEA* by refusing to transport the child to the day care center. More recently, the federal trial court in Maine reached the same outcome. The court agreed that a hearing officer and a federal magistrate properly denied a mother's request that her

son, who had a severe learning disability, be allowed to ride a public school bus home and be met by another adult because she could not be there to meet him when he returned from school [3] The court specified that the mother was not entitled to have her request granted because it was motivated by her child care arrangements with her ex-husband, with whom she shared custody, not her son s educational needs

Divorced parents reach a variety of shared custody agreements In some circumstances, children reside with each parent on a rotating basis under joint custody arrangements In a case illustrating such an arrangement where a father lived outside of a district's boundaries, an appellate court in Pennsylvania acknowledged that a school board was required to provide *transportation on the weeks when the child lived with his mother but not those when he resided* with his father [4] The court added that the extra transportation the mother sought did not address the boy s needs because it was designed only to accommodate the parents domestic situation

Along with providing specialized equipment that may be needed to transport students safely, a case from Michigan demonstrates that school boards may have to provide aides on vehicles A federal trial court ordered a board to provide a trained aide to attend a student who was medically fragile when he was being transported

C *Counseling Psychological and Social Work Services*

The *IDEA*'s regulations define counseling as a service provided by qualified social workers psychologists guidance counselors or other qualified persons [6] The definition of psychological services includes psychological counseling while the definition of social work services includes group and individual counseling [8] Yet the regulations neither use nor define the term psychotherapy This is important because while most public school boards provide students with in-house counseling psychological services, and social work services, situations can occur which call for these services to be provided by outside vendors School board employees and families would benefit from clarity in this regard

An emerging controversy involving the medical exclusion clause of the related services mandate concerns psychotherapy Counseling psychological and social work services are clearly required related services only when students with disabilities need them to benefit from their IEPs While psychotherapy can be classified as a psychological service in some situations it *falls within the medical exclusion* Whether psychotherapy is a psychological or medical service depends on state laws governing psychotherapy Put another way some jurisdictions stipulate that only psychiatrists can provide psychotherapy, while others allow clinical psychologists to provide this service Because psychiatrists are licensed physicians psychotherapy is an exempted medical service in states that allow only psychiatrists to provide it

The distinguishing criterion regarding whether psychotherapy is a related service or an exempted medical service is how it is defined in a state law, not by whom it is provided In Illinois, for instance where state law allows nonpsychiatric professionals to provide psychotherapy a federal trial court decreed that a school board was responsible for the costs of psychotherapy even though the sessions were provided by a psychiatrist [9] The court judged that the criterion, that boards were not obligated to provide services that must be performed by physicians did not mean that services that could be provided by nonphysicians but were in actuality provided by physicians were excluded According to the court the board still had to pay for the services to *the extent that they were performed by a nonphysician*

Counseling, psychotherapy, or social work services can be required as related services for students with emotional difficulties until these conditions are addressed. The Supreme Court of Montana, turning to the dictionary for a definition of 'psychotherapy', found that according to *Webster's*, since it is a psychological service, it had to be treated as a related service.[30]

The Third Circuit,[31] along with federal trial courts in Illinois[32] and Massachusetts,[33] agreed that psychotherapy is a required related service because it helps some children in benefiting from their IEPs. Because counseling is generally not considered a medical service, it may not be an exempted service. For example, the federal trial court in Connecticut indicated that psychological and counseling services that a student with disabilities needed to benefit from the services in his IEP were not embraced in the exempted medical services clause.[34] The court asserted that insofar as the therapy services offered as part of a residential placement were essential to educate the child, they were required related services.

An important element in the requirement to provide related services is that they must be necessary for students to benefit from special education services. The Fourth Circuit thus remarked that counseling services were not required for a student from Virginia who improved greatly under an IEP that did not include counseling.[35]

If a therapeutic service can be classified as psychiatric, courts are likely to treat it as falling within the medical exception. The federal trial court for the District of Columbia decided that the school board was not required to pay for the residential component costs of a placement in a psychiatric hospital and school, because the primary reasons for the child's placement were medical, not educational.[36] In like fashion, a federal trial court in Illinois concluded that psychiatric services are exempted medical services, because psychiatrists are licensed physicians.[37] The Fourth[38] and Ninth[39] Circuits agreed that insofar as psychiatric facilities are medical facilities, governing boards in Virginia and California, respectively, were not required to pay for the services they provide. Moreover, the federal trial court in Connecticut rejected a mother's request for psychiatric supervision to manage her son's medication regimen because it was an exempted medical service.[40]

Psychiatric and other medical services are required as related services when they are for diagnostic or evaluative purposes. In an early case from Tennessee, a federal trial court pointed out that an evaluation by a neurologist was a related service.[41] Further, the federal trial court in Hawaii recognized that hospitalization costs were a significant part of a student's diagnosis and evaluation as having a disability. Although the student was hospitalized due to a medical crisis, the court directed state officials to pay for her stay because it was an integral part of her overall evaluation.[42]

Whether placement in a facility providing psychiatric services is primarily for medical or educational reasons may impact the costs that school boards must pay. Two cases from California to reach the Ninth Circuit, resolved months apart, but reaching divergent results, are illustrative.

Where a student was admitted to an acute care psychiatric hospital because staff members in her residential school could no longer control her behavior, her parents unsuccessfully asked their board to pay for this placement.[43] In comparing the child's placement to one for a student suffering from a physical illness, the Ninth Circuit maintained that the change was made for medical reasons. The court added that the student's room and board costs were medically, not educationally, related because the hospital did not provide educational services.

In the second case, when parents placed their son in a residential school and psychiatric hospital for assaulting a family member, the local board refused to pay for his education. The

Ninth Circuit affirmed that insofar as the student was placed in a boarding school which had the capacity to offer the necessary medical services primarily for educational reasons, the board had to bear the cost because the change provided the child with a FAPE under the IDEA.[44]

D *Physical, Occupational, and Speech Therapy*

Occupational therapy (OT) refers to services to improve, develop, or restore functions impaired or lost through illness, injury, or deprivation or to improve the ability of students to perform tasks for independent functioning.[45] OT also includes services to prevent the impairment or loss of functions through early intervention.

The *IDEA*'s regulations define physical therapy (PT) as those services provided by qualified physical therapists.[46] Speech-language pathology includes the identification, diagnosis, and appraisal of speech or language impairments and the provision of appropriate services for the habilitation or prevention of communication impairments.[47]

A federal trial court in New York ordered a school board to provide OT over the summer break in realizing that a student would have regressed in the areas of upper body strength and ambulation skills if it were not provided.[48] The court ruled that the child's ability to perform and function in classrooms would have been adversely affected without the summer therapy. Conversely, the federal trial court for the District of Columbia rejected a proposed placement for a student with multiple disabilities as inappropriate because it did not provide an integrated OT program as called for in her IEP.[49] The court ascertained that the child did not need the program because she would not have benefited from her special education program even with this service. Even so, the amount of OT that students receive must be sufficient to *confer* educational benefit. In a case on point, a federal trial court in California upheld a hearing officer's order directing a board to provide additional OT to a student who had delays in all areas of development.[50] Many school boards rely on OT therapy assistants to provide services. A federal trial court in Tennessee upheld this practice because the assistants were well trained and helped a child to make progress.[51] In addition, the court suggested that boards are not required to maximize student gains.

In a case from Pennsylvania, the Third Circuit held that PT is an important facilitator of classroom learning for some children.[52] Noting that the *IDEA* calls for an education that provides meaningful benefit, the court observed that PT is an essential prerequisite for learning for some students with severe disabilities.

E *Recreation and Enrichment Programs*

The *IDEA* identifies recreation and therapeutic recreation as related services.[53] The definition of recreation in the *IDEA*'s regulations includes assessment of leisure function, recreation programs in schools and community agencies, and leisure education, along with therapeutic recreation.[54] Moreover, the *IDEA*'s regulations specify that school boards must provide nonacademic and extracurricular services and activities to the extent necessary to afford students with disabilities opportunities for participation equal to those given to their peers without disabilities.[55] Nonacademic and extracurricular services and activities may include lunch, recess, athletics, recreational activities, special interest groups or clubs, employment, and many of the items listed as related services. These activities must be provided in inclusive settings to the maximum extent appropriate.[56]

If students with disabilities are unable to participate in general extracurricular programs, educational officials may need to provide them with special activities.[57] Also, students who meet

the eligibility requirements for participation in general extracurricular programs cannot be denied access to them under Section 504 of the *Rehabilitation Act*.[58] Officials may thus need to provide reasonable accommodations[59] to allow students covered by the *IDEA* to participate in general extracurricular programs by such means as waiving eligibility requirements preventing them from participating due to their disabilities.

The Supreme Court of Minnesota directed an IEP team to evaluate whether an extracurricular or nonacademic activity was appropriate for a student with disabilities.[60] On the other hand, an appellate court in New York refused to order a board to provide an afterschool program because it was unnecessary for the student to receive a FAPE.[61]

F *School Nursing Services*

According to the *IDEA*'s regulations, school nursing services are those performed by qualified school nurses and are designed to enable students with disabilities to receive FAPEs.[62] There has been litigation over the delivery of health-related services in schools because of the medical exclusion clause. Insofar as some medical procedures can be performed by registered nurses, questions have arisen as to whether selected nursing services fall within the definition of school health services or are exempted medical services.

The Supreme Court, in *Irving Independent School District v. Tatro*,[63] reasoned that catheterization was a required related service for a student in Texas who could not voluntarily empty her bladder due to spina bifida. Acknowledging that the student had to be catheterized every three to four hours, the Court observed that services designed to allow a child to remain in class during the school day, such as catheterization, are no less related to the effort to educate than those allowing her to reach, enter, or exit the school. The Court thought that insofar as catheterization could have been performed by a school nurse or trained health aide, Congress did not intend to exclude it as a medical service, thereby clarifying when related services must be provided to students with disabilities. The Justices were of the view that absent a disability requiring special education, the need for related services did not create an obligation under the *IDEA* and that educators must provide only those services that are necessary to help students in benefiting from special education. The Court emphasized that a life support service would not be a related service if it did not need to be provided during school hours.

The Ninth Circuit affirmed that the state-wide school board in Hawaii had to provide a student with cystic fibrosis with health services attendant to help with a tracheotomy tube even though it became dislodged occasionally, needed to be reinserted, and mucus had to be suctioned from her lungs periodically.[64] Because these procedures could have been performed by a school nurse or trained layperson, the court treated them as required related services.

Pursuant to an order from a federal trial court in Illinois, a school board had to provide nursing services for a student during transportation.[65] Earlier, a federal trial court in Michigan declared that a board was required to provide an aide on a school bus to help a student who was medically fragile.[66] The court was satisfied that having an aide or other health professional present did not constitute an exempted medical service.

Services that can be delivered by school nurses, health aides, or even trained laypersons fall within the *IDEA*'s mandated related services clause. Even so, because many students who are medically fragile require the full-time presence of nurses, courts disagreed over whether boards were required to pay for such care for single students or whether this was more akin to exempted medical services than necessary health services.

The Supreme Court resolved the split over school nursing services in *Cedar Rapids Community School District v. Garret F.*[67] Affirming that a school board in Iowa was required to provide a full-time nurse for a student who was quadriplegic, the Court determined that while continuous services may be more costly and may require additional personnel, this did not render them more medical. Reiterating that cost was not a factor in the definition of related services, the Court concluded that even costly related services must be provided to help guarantee that students with significant medical needs are integrated into schools.

G *Diagnostic and Evaluative Services*

The proper diagnosis and evaluation of students suspected of being disabled is an important component of the special education process. Medical evaluations can be part of this process. The *IDEA* specifies that medical services can be related services when used as part of this process.[68]

Diagnostic and evaluative services do not refer only to assessments that may be conducted as part of initial evaluations. A federal trial court in Tennessee decreed that the ongoing monitoring of a student's condition fell within the realm of diagnostic and evaluative services.[69] The court wrote that insofar as the medical services at issue, which were designed to monitor and adjust the student's medication, were for diagnostic and evaluative purposes, the board was responsible for their payment.

In a case from Hawaii, the Ninth Circuit upheld an order directing the school board to pay for hospitalization costs that were a significant part of a student's diagnosis and evaluation as disabled.[70] The dispute arose after the child's stay in the hospital triggered her diagnosis and evaluation. The court commented that the preplacement of medical costs limited to diagnosis and evaluation are recoverable where students are subsequently identified as qualified for special education services.

H *Cochlear Mapping*

The *IDEA*'s regulations exclude surgically implanted medical devices or their replacements from the definition of related services.[71] Following the passage of the amendments adding this exception, the US Department of Education (USDOE) promulgated regulations excluding cochlear mapping from the definition of related services.[72] Shortly after the new regulations were implemented, a federal trial court in Tennessee rejected a parental request to pay for mapping services for their daughter's cochlear implants.[73] The court ruled that insofar as the amended regulations removed the mapping of cochlear implants from the definition of related services, the board did not have to pay for the devices.

In a later suit challenging the cochlear mapping regulations, the federal trial court in the District of Columbia insisted that the USDOE did not contravene the plain language of the *IDEA*.[74] The court indicated that although Congress had not directly addressed the question of whether cochlear mapping constituted a related service, the USDOE was entitled to deference because its position represented a permissible construction of the *IDEA*. The District of Columbia Circuit affirmed that the revised regulations constituted a permissible construction of the *IDEA* because they were rationally related to the statute's underlying objective of meeting the educational needs of students with disabilities.[75]

I *Counseling and Parent Training*

As defined in the *IDEA*'s regulations, parent training and counseling means assisting them to understand the special needs of their children and provide them with information about child development.[76] A federal trial court in Texas maintained that officials could have provided a FAPE in a public school for a student with severe disabilities if her parents received training and counseling, thereby averting the need for a residential placement.[77] The court, observing that insofar as the child needed a year-round highly structured educational program after school hours, ordered board officials to provide her parents with training in behavioral techniques. The court also directed educational officials to offer counseling to help relieve the stress of the burdensome demands that the child's disability placed on her parents.

Similarly, a federal trial court in New York was convinced that not providing parent training and counseling to the parents of a student with severe autism was likely to lead to regression in the child's development.[78] Remarking that the student's IEP was inappropriate, the court noted that educators ignored a crucial component of a behavioral control program by failing to counsel the parents about how to act at home in order to reinforce the training their daughter received in school.

As with all special education and related services, school boards are not required to provide an optimal level of parent training and counseling. Recognizing that a board was not obligated to provide every possible service or the very best education that parents might desire, a federal trial court in Texas posited that an IEP reducing the amount of scheduled at-home parent training sessions did not deny a child with multiple disabilities a FAPE.[79]

In like manner, the federal trial court in Connecticut ruled that the *IDEA* did not require a school board to provide a twenty-four-hour crisis plan, respite care for the family, and an in-home mentor in the IEP of a student with a long history of behavior problems.[80] The court agreed with a hearing officer that insofar as these aids were not related services under the *IDEA*, they were unnecessary, particularly because the student had made academic progress without them.

J *Residential Placements and Lodging*

Courts sometimes order residential placements for students who require consistency and support that is not available in their home environments. Many students with disabilities require placements in residential schools or facilities in order to receive FAPEs.

In some cases, IEP teams call for residential placements because children need instructional services on a round-the-clock basis in order to receive FAPEs.[81] In other situations, students who do not necessarily require twenty-four-hour per-day instruction must remain at such schools on a residential basis since they are the only facilities that can provide FAPEs but are not within commuting distance of their homes. Under these circumstances, school boards must still pay for the room-and-board portion of residential placements because these arrangements are considered to be a related service.

Pursuant to the *IDEA*'s regulations, if a residential program 'is necessary to provide special education and related services to a child with a disability, the program, including nonmedical care and room and board, must be at no cost to the parents of the child'.[82] This regulation applies whether the residential portion of the placement is needed for educational or access reasons. When students are placed in residential facilities with psychiatric components, the medical and educational elements are often intricately intertwined. Still, in a case from Texas, the Fifth Circuit

explained that courts must examine each part of placements and weed out the costs that are reimbursable from those that are not.[83]

Boards may be required to provide off-campus lodging to students with disabilities if officials cannot make appropriate arrangements for them to live at their schools and the facilities are too far from home to commute.[84] This can occur when schools either do not offer residential components or do not have room for children in their residential programs but have openings in their day programs.

Residential placements are not considered to be related services if their sole purpose is to provide confinement. Explaining that it stretches the *IDEA* too far to classify confinement as a related service, the Seventh Circuit decided that a student from Illinois whose problems were not primarily educational did not require a residential placement at public expense.[85]

III Assistive Technology

The 1990 *IDEA* amendments added definitions of assistive technology (AT) devices and services. The 1997 and 2004 versions of the *IDEA* clarified and expanded these definitions. AT devices are items, pieces of equipment, or product systems used to increase, maintain, or improve the functional capabilities of individuals with disabilities. These devices may include commercially available, modified, or customized equipment[86] but, as with related services, do not include surgically implanted medical devices.[87] AT services, which are designed to help individuals in the selection, acquisition, or use of assistive technology devices,[88] include evaluations of the needs of children, provision of AT devices, training in their use, coordination of other services with AT, and maintenance and repair of devices.[89]

As important as it has become, AT is not specifically included in the definition of either special education or related services, but does fit within the definition of special education as specially designed instruction and within the definition of related services as a developmental, corrective, or supportive service. Rather than include AT in either of these definitions, Congress created it as a category separate from special education and related services. Accordingly, assistive technology can be a special education service, a related service, or simply a supplementary aid or service.[90] This is significant because boards are obligated to provide supplementary aids and services to students with disabilities to allow them to be educated in the least restrictive environment (LRE).[91]

AT is required when it is necessary for students to receive FAPEs under the standard the Supreme Court established in *Board of Education of the Hendrick Hudson School District v. Rowley*.[92] Insofar as AT may allow many students with disabilities to benefit from education in the LRE, it may be required under this *IDEA* mandate. Still, boards are not required to provide AT when students are able to receive meaningful educational benefits without this service.[93]

IEP teams must consider whether children require AT devices and services in order to receive FAPEs.[94] If teams agree that students need AT, then they must write this into IEPs. Even so, the *IDEA* does not require IEP teams to document that they considered providing students with AT devices and services but chose not to provide this form of assistance.

In explanatory material accompanying the 1999 *IDEA* regulations, the USDOE made it clear that school boards are not required to provide personal devices such as eyeglasses, hearing aids, and braces that students would require regardless of whether they attended school.[95] Of course, nothing prohibits boards from providing students with these items.

Based on federal regulations, students with disabilities are entitled to have access to general technology available to peers who are not disabled. When students with disabilities require accommodations in order to use general technology, educators must make sure to provide these modifications.[96] As with the delivery of special education services, the choice of methodology rests with educators.[97]

A case from New York highlights the fact that AT devices should aid students in receiving FAPEs by mitigating the effects of their disabilities but should not circumvent the learning process. Although a student with learning disabilities that affected his ability in mathematics was allowed to use a calculator, educators denied his request to use a more advanced calculator on the ground that doing so would have circumvented the learning process. The Second Circuit affirmed a hearing offer's adjudication that insofar as officials provided the student with appropriate AT, the more advanced calculator was unnecessary.[98]

In order to provide appropriate AT, school personnel must conduct timely evaluations to assess student needs.[99] AT evaluations should identify students' areas of need and assess whether AT is needed to provide educational benefits. On the other hand, since AT is required only when needed for students to receive FAPEs, it is unnecessary to assess children for AT when it is clear that they can receive meaningful educational benefit without assistive technology.

School boards have the duty to provide AT, when needed, and must teach all stakeholders to use the devices. However, the judiciary has refused to impose liability on boards when educators supply appropriate AT but students do not use the devices or services.[100] Even so, boards must provide appropriate training for students and teachers in the use of AT devices, assist them in using technology properly, and provide follow-up support. If students fail to use the supplied AT due to a lack of training, boards are likely to be accountable.

IV Transition Services

School boards must provide transition services to students with disabilities in order to facilitate their passages from school to post-school activities.[101] Transition services not only involve instruction and training but may also encompass related services,[102] instruction, community experiences, and the acquisition of daily living skills.[103] While IEP teams must include transition plans in the IEPs of students who reach the age of sixteen,[104] the First Circuit affirmed that this requirement does not mandate a stand-alone plan.[105] The court agreed that an IEP developed by a team in New Hampshire designed to integrate transition services throughout a child's program met the *IDEA*'s standard.

In Hawaii, the federal trial court approved a coordinated set of activities designed to promote a student's movement from school to post-school activities. These activities, which were written into the student's IEP, were aimed at assisting him in completing high school, becoming part of his community, exploring careers and colleges, and meeting with vocational counselors.[106] Subsequently, the Fifth Circuit affirmed that transition plans detailing desired adult outcomes, including school and family action steps, were appropriate for a high school student in Louisiana who had developmental delays.[107]

V Recommendations

Along with special education, school or governing boards must ultimately provide students with disabilities with such related services as well as AT services plus devices to help them to benefit from their IEPs. Boards must also include transition services in the IEPs of students with

disabilities that are in place when they turn sixteen. As such, this section offers recommendations for educational leaders, whether board members or administrators, along with their attorneys, as they go about the task of ensuring educational programming for students with disabilities. Educational leaders and their lawyers should

First, offer related services to students with IEPs if they are necessary to receive FAPEs.

Second, as to transportation,

a) provide special transportation when students are unable to access standard modes of transportation;
b) avoid excessively long bus or van rides to schools because these can be considered unreasonable and transportation arrangements must be reasonable;
c) make provisions for children whose disabilities prevent them from getting to and from their transportation vehicles;
d) provide students with transportation to and from their residential facilities;
e) establish neutral policies for transporting all children to day care centers or after school caretakers;
f) ensure that students with disabilities receive the same considerations as peers who are not disabled concerning transportation outside of school attendance boundaries;
g) provide aides on vehicles, if necessary, to ensure safe passage for children who are medically fragile.

Third, as to medical and health services,

a) deliver medical services for children if needed for diagnostic or evaluative purposes;
b) afford students with disabilities life-support services if necessary during school days;
c) provide students with all necessary school health services that can be performed by school nurses, health aides, or other trained laypersons.

Fourth, offer needed full-time nursing assistance to help guarantee that children with significant medical needs are integrated into regular classes.

Fifth, provide psychotherapy, social work services, or counseling when the resolution of emotional concerns is a prerequisite to helping children make successful progress toward their IEP goals.

Sixth, as to residential placements,

a) consider the primary reason for residential placements because elements in such settings that are non-educational may not be the responsibilities of school boards;
b) pay room and board expenses for children if the only facilities that can provide FAPEs are not within commuting distance of their homes;
c) train parents so that there is consistency between the techniques used in schools and homes, a potentially viable option to residential placements.

Seventh, as to extracurricular activities,

a) provide full access to sports or other extracurricular activities whenever students qualify for participation;
b) include participation in sports or other extracurricular activities in IEPs if these activities may assist qualified students to benefit from their educational programs.

Eighth, offer necessary AT to students with disabilities, recalling that boards are not required to provide personal devices they would need regardless of whether they attended school.

Ninth, develop transition plans for students who are close to exiting educational systems that include goals and objectives while identifying the services to be provided to meet those goals and objectives.

Tenth, as with other policies, educators, governing boards, and their lawyers should review their rules annually, typically between school years, to ensure that their policies are up-to-date with developments in the law and education.

VI Conclusion

The sooner that school boards, educational leaders, and their lawyers start planning to provide related services, technology, and transition planning for students with disabilities, then the better able they should be to serve these children by marshaling their resources in the most effective manner. Those charged with providing FAPEs for children with disabilities, regardless of where they serve, must recognize the important role related services and assistive technology play in the overall development of these students. These services should be provided both because they are mandated by law and help children with disabilities achieve their potential. At the same time, transition services, coupled with the benefits students can receive from related services and assistive technology, are vital in terms of helping students become productive members of society for the betterment of all.

Keywords: special education; related services; assistive technology; transition services; students with disabilities.

Endnotes

1 20 USC §§ 1400–1482 (2012). The *IDEA*'s regulations are published at 34 CFR §§ 300.1–300.818 (2013).
2 20 USC §1400(c)(5)(D).
3 Ibid §1401(26)(A).
4 Ibid §1401(1)-(2).
5 Ibid §1401(34).
6 See also Ibid §1401(26)(B): 'The term does not include a medical device that is surgically implanted, or the replacement of such device.'
7 468 US 883 (1984).
8 Ibid 894.
9 Ibid.
10 20 USCA. §§ 1401(14), 1414(d)(1)(A).
11 For a chapter on the rights of students with disabilities in Australia, see 'Australia', Sally Varnham and Jim Jackson, in Charles J. Russo (ed), *The Legal Rights of students with Disabilities: International Perspectives,* Rowman & Littlefield Publishers, 2011, 21-26 (acknowledging that Australian law offers 'student support services to ensure that individuals with disabilities are able to partake in educational opportunities to the fullest extent possible and as far as possible on the same basis as those without disabilities.').
12 For a chapter on the rights of students with disabilities in New Zealand, see 'New Zealand', Kate Diesfeld and John Hancock, in Charles J. Russo (ed), *The Legal Rights of students with Disabilities: International Perspectives,* Rowman & Littlefield Publishers, 2011, 157, 167 (noting that the Ministry of Education, Special Education provides 'therapists for speech, occupational, and physiotherapists;

psychologists for assessment and intervention advisors, teacher aides, and support workers [for students with disabilities] Additionally children may receive subsidies or allowances for transportation assistance alterations or additions to state school property, assistive technology and equipment)

13 34 CFR § 300 34

14 *See eg K C ex rel Her Parents v Nazareth Area School District*, 806 F Supp 2d 806 (FD Pa 2011) (finding that the board provided appropriate executive functioning coaching for the student)

15 34 CFR § 300 34(c)(16)(iii)

16 *Hurry v Jones* 560 F Supp 500 (DRI 1983), affirmed in part reversed in part 734 F 2d 879 (1st Cir, 1984) See also *District of Columbia v Ramirez* 377 F Supp 2d 63 (DDC 2005) (directing the board to provide an aide to convey a student from his apartment to his school bus)

17 *Malehorn v Hill City School District* 987 F Supp 772 (DSD 1997)

18 *Union School District v Smith* 15 F 3d 1519 (9th Cir, 1994)

19 *Cohen v School Board of Dade County* 450 So 2d 1238 (Fla Dist Ct App 1984)

20 *School Board of Pinellas County v Smith* 537 So 2d 168 (Fla Dist Ct App, 1989)

21 *Alamo Heights Indep School District v State Board of Education* 790 F 2d 1153 (5th Cir 1986)

22 *Fick ex rel Fick v Sioux Falls School District* 337 F 3d 968 (8th Cir 2003)

23 *Ms S ex rel L S v Scarborough School Committee* 366 F Supp 2d 98 (D Me 2005)

24 *North Allegheny School District v Gregory P* 687 A 2d 37 (Pa Commw Ct 1996)

25 *Macomb County Intermediate School District v Joshua S* 715 F Supp 824 (FD Mich 1989)

26 34 CFR § 300 34(c)(2)

27 34 CFR § 300 34(c)(10)(v)

28 34 CFR § 300 34(c)(14)(ii)

29 *Max M v Thompson* 629 F Supp 1504 (ND Ill 1986)

30 *In re A Family* 602 P 2d 157 (Mont 1979)

31 *TG and PG v Board of Education of Piscataway* 576 F Supp 420 (DNJ, 1983) affirmed 738 F 2d 425 (3d Cir 1984)

32 *Gary B v Cronin* 542 F Supp 102 (ND Ill 1980)

33 *Doe v Anrig* 651 F Supp 424 (D Mass, 1987)

34 *Papacoda v State of Connecticut* 528 F Supp 68 (D Conn 1981)

35 *Tice v Botetourt County School Board* 908 F 2d 1200 (4th Cir 1990) *See also* WT and *KT ex rel JT v Board of Education of School District of NY*, 716 F Supp 2d 270 (SDNY, 2010) (deciding that a child did not require counseling to make academic progress)

36 *McKenzie v Jefferson* EHLR 554 338 (DDC 1983)

37 *Darlene L v Illinois Board of Education* 568 F Supp 1340 (ND Ill 1983)

38 *Tice v Botetourt County School Board* 908 F 2d 1200 (4th Cir, 1990)

39 *Clovis Unified School District v California Office of Administrative Hearings* 903 F 2d 635 (9th Cir, 1990)

40 *MK ex rel Mrs K v Sergi* 554 F Supp 2d 201 (D Conn 2008)

41 *Seals v Loftis* 614 F Supp 302 (FD Tenn 1985)

42 *Department of Education State of Hawaii v Carl Rae S* 158 F Supp 2d 1190 (D Haw 2001)

43 *Clovis* 903 F 2d 635 (9th Cir 1990)

44 *Taylor v Honig* 910 F 2d 627 (9th Cir 1990)

45 34 CFR § 300 34(c)(6)

46 Ibid § 300 34(c)(9)

47 Ibid § 300 34(c)(15)

48 *Holmes v Sobol* 690 F Supp 154 (WDNY 1988)

49 *Kattan v District of Columbia* 691 F Supp 1539 (DDC 1988)

50 *Glendale Unified School District v Almasi* 122 F Supp 2d 1093 (CD Cal 2000)

51 *Metropolitan Nashville and Davidson County School System v Guest* 900 F Supp 905 (MD Tenn, 1995)

52 *Polk v Central Susquehanna Intermediate Unit 16* 853 F 2d 171 (3d Cir 1988)

53 20 USC § 1401(26)(A)

54 34 CFR § 300.34(c)(11).
55 Ibid § 300.107.
56 Ibid § 300.117.
57 *See Dear Colleague Letter*, Assistant Secretary for Civil Rights, US Department of Education. available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf.
58 *Rehabilitation Act*, Section 504, 29 U.S.C. § 794 (2006).
59 For a well-known case from Australia dealing with accommodations, albeit involving an academic matter rather than recreational and enrichment programs, see Hills Grammar School v Human Rights and Equal Opportunity Commission [200] FCA 658. For a detailed discussion of this case, see Jackson, Jim & Varnham, Sally, Law for Educators: School and University Law in Australia (LexisNexis Butterworths, 2007) 121– 122.
60 *Independent School District No 12, Centennial v Minnesota Department of Education*, 788 NW 2d 907 (Minn, 2010).
61 *Roslyn Union Free School District v University of the State of NY, State Education Department*, 711 NYS 2d 582 (NY App Div, 2000).
62 34 CFR § 300.34(c)(13).
63 468 US 883 (1984).
64 *Department of Education, State of Hawaii v Katherine D*, 531 F Supp 517 (D Haw, 1982), aff'd, 727 F 2d 809 (9th Cir, 1983).
65 *Skelly v Brookfield LaGrange Park School District 95*, 968 F Supp 385 (ND Ill, 1997).
66 *Macomb County Intermediate School District v Joshua S*, 715 F Supp 824 (ED Mich, 1989).
67 526 US 66 (1999).
68 34 CFR § 300.34(c)(5).
69 *Brown v Wilson County School Board*, 747 F Supp 436 (MD Tenn, 1990).
70 *Department of Education, State of Hawaii v Cari Rae S*, 158 F Supp 2d 1190 (D Haw, 2001).
71 20 USC § 1401(20)(B).
72 34 CFR § 300.34(b).
73 *AU ex rel NU and BU v Roane County Board of Education*, 501 F Supp 2d 1134 (ED Tenn, 2007).
74 *Petit v US Department of Education*, 578 F Supp 2d 145 (DDC, 2008), 756 F Supp 2d 11 (DDC, 2010).
75 *Petit v US Department of Education*, 675 F 3d 769 (DC Cir, 2012).
76 34 CFR § 300.34(c)(8).
77 *Stacey G v Pasadena Independent School District*, 547 F Supp 61 (SD Tex, 1982), vacated and remanded on other grounds, 695 F 2d 949 (5th Cir, 1983).
78 *PK and TK ex rel SK v New York City Department of Education*, 819 F Supp 2d 90 (EDNY, 2011).
79 *Clear Creek Independent School District v JK*, 400 F Supp 2d 991 (SD Tex, 2005).
80 *MK ex rel Mrs K v Sergi*, 554 F Supp 2d 201 (D Conn, 2008).
81 The leading case on point is *Timothy W v Rochester, NH, School District*, 875 F 2d 954 (1st Cir, 1989), *cert denied*, 493 US 983 (1989).
82 34 CFR § 300.104.
83 *Richardson Independent School District v Michael Z*, 580 F 3d 286 (5th Cir, 2009).
84 *Union School District v Smith*, 15 F 3d 1519 (9th Cir, 1994); *Ojai Unified School District v Jackson*, 4 F 3d 1467 (9th Cir, 1993).
85 *Dale M v Board of Education of Bradley-Bourbonnais High School District No 307*, 237 F 3d 813 (7th Cir, 2001).
86 20 USC § 1401(1)(A).
87 Ibid § 1401(1)(B).
88 Allan G Osborne, 'Providing assistive technology to students with disabilities under the *IDEA*' (2012) 280 *Education Law Reporter* 519–533.
89 20 USC § 1401(2).
90 34 CFR § 300.105(a).
91 20 USC §§ 1401(33), 1412(a)(5).
92 458 US 176 (1982).

93 *Smith v District of Columbia*, 846 F Supp 2d 197 (DDC, 2012)
94 34 CFR § 300 324(a)(2)(v)
95 Assistance to the States for the Education of Children with Disabilities Appendix B (1999) *Federal Register* 64(48) 12481–12672 at 12540
96 *Ibid*
97 *Miller v Board of Education of the Albuquerque Public Schools* 455 F Supp 2d 1286 (DNM 2006), affirmed 565 F 3d 1232 (10th Cir 2009)
98 *Sherman v Mamaroneck Union Free School District* 340 F 3d 87 (2d Cir, 2003)
99 *See eg, Jaccari J v Board of Education of Chicago District No 209* 690 F Supp 2d 687 (ND Ill 2010), *Blake C ex rel Tina F v Dep t of Educat on State of Hawaii* 593 F Supp 2d 1199 (D Haw 2009)
100 *See eg TG ex rel Mr & Mrs TG v Midland School District* 848 F Supp 2d 902 (CD Ill, 2012)
101 20 USC § 1414(d)(1)(A)
102 Ibid § 1401(34), 34 CFR § 300 43
103 20 USC § 1401(34)
104 20 USC § 1414(d)(1)(A)(i)(VIII)
105 *Lessard v Wilton Lyndeborough Coop School District* 518 F 3d 18 (1st Cir 2008)
106 *Brownell v LeMahieu* 127 F Supp 2d 1117 (D Haw 2000)
107 *Pace v Bogalusa City School Board* 325 F 3d 609 (5th Cir 2003)