

BEFORE THE IOWA DEPARTMENT OF EDUCATION

(Cite as 24 D.o.E. App. Dec 88)

In re Brad B.)
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Scott and Lorena B., parents)
Appellants)
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v.)
)
Mason City Community School District)
and Area Education Agency 267)
Appellees)
)

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AUG 16 2006

DECISION

DEPARTMENT OF EDUCATION
Bureau of CFCS

The above entitled matter came for hearing before Larry Bartlett, Administrative Law Judge (ALJ), on July 12, 2006, and was continued on August 2, 2006. The hearing was held in the Offices of Area Education Agency 267 (AEA) in Clear Lake, Iowa, by mutual agreement. The Appellants were represented by Attorney Judith O'Donohoe, the Mason City Community School District (MCCSD) was represented by Attorney J. Matthew Anderson, and Area Education Agency 267 (AEA) was represented by Attorney Beth Hansen. The hearing was held pursuant to Section 256B.6 of the Iowa Code (2005), rules of the Iowa Department of Education found in Chapter 281-41, Iowa Administrative Code, and rules of the United States Department of Education found at 34 C.F.R. Part 300 (2004), insofar as they were not altered by the 2004 Amendments of the Individuals with Disabilities Education Act (42 U.S.C. §§ 1401-1487) (IDEA). The hearing was open to the public as determined by the Appellants.

This Request for Due process Hearing was filed on April 25, 2006. In it the Appellants alleged that the MCCSD had not fulfilled its responsibility to provide transitional services to Brad B. and sought to graduate him and thereby end receipt of his school services under the IDEA. The Request stated that the Appellants had requested transitional services for Brad, but that they had not been provided. The Appellants alleged that Brad had not met either his graduation requirements or IEP goals. They requested that the MCCSD not graduate Brad until his "IEP goals" were met, transitional services provided, and graduation requirements met. Brad's parents requested that Brad be provided transitional services through a community college provided program (VESS) under an arrangement with the MCCSD.

As a result of a granted request for continuance, the above entitled matter was continued until August 25, 2006.

FINDINGS OF FACT

The ALJ finds that he and the Iowa Department of Education (Department) have jurisdiction over the Parties and subject matter involved in this Due Process Hearing.

Bradley B. lives with his parents and younger brother and sister. He is an 18-year-old senior in the MCCSD. He had been proposed for graduation on May 28, 2006. Graduation was stayed pending the outcome of these proceedings.

Brad was diagnosed with a tumor in his brain in November, 1995, at the age of seven. He underwent several surgical procedures, including "resection" of the tumor, the placement of a "VP shunt," and subsequent removal of a cyst in the area of the original tumor. No evidence of tumor recurrence since the surgery has been determined. As a result of the surgeries, Brad has experienced several resulting complications, including vision loss in his left eye, limited vision in his right eye, hypothyroidism, and diabetes insipidus. He also developed "hypothalamic syndrome" post surgery, with associated weight gain, insatiable hunger, and preoccupation with food. He is on several medications. He uses a white cane for assistance in mobility.

Brad has undergone neuropsychological evaluations in 1998, 1999, 2001, and the latest a little over a year ago in July, 2005. The last evaluation was conducted by Dr. Jonathan Miller, a pediatric Neuropsychologist at the Children's Hospital and Clinics of Minneapolis, Minnesota, and is generally referred to in the record as "Dr. Miller's Report" (14 pages, Ex. 23).

Evaluations found that Brad had relative strengths in immediate recall of "meaningful information" (pictures and stories), "concept formation," and "mental flexibility, and verbal fluency." Areas of concern were noted in visual memory, processing speed, visual-perception and verbal learning. He was determined to function in the "borderline range" intellectually. He showed significant difficulty planning and organizing more complex visual information. He benefited from context, repetition, and multiple choice cueing on verbal memory tasks.

Academically, Brad has demonstrated mild to borderline impaired intellectual abilities, with a relative strength in his low average word recognition abilities, and has demonstrated impaired math and spelling skills consistent with his impaired intellectual abilities. He has demonstrated significant difficulties with verbal learning and retrieval, abstract visual memory, motor planning and organization, visual-perception, and fine motor speed and dexterity.

The Miller Report noted likely future difficulty for Brad with "complex novel visual-spatial concepts," such as algebra, geometry, and high level sciences and organized written output, such as note-taking or narrative writing, especially under time constraints. The Report noted the desirability of modifying all time constraints related to completion of work related tasks. According to the Miller Report, Bradley experienced a pattern of impairment "suggestive of significant difficulty processing perceptual-motor information, as well as less developed processing of language if it requires a higher level of organization and planning." The Miller Report noted additional problems for Bradley with executive functioning skills which resulted in diminished social tact, ability to reason abstractly, ability to control inappropriate behaviors,

ability to organize and manage activities, ability to break down complex tasks into manageable steps, problem solving multi-tasking, as well as inconsistencies in academic and memory skills. The Report concluded that Brad's cognitive difficulties continued to be, "educationally significant."

As a general recommendation, the Miller Report stressed the desirability of interventions to help Brad develop functional communication and academic skills as well as employment and social behaviors to enhance his future potential levels of independence.

The Miller Report concluded with 23 specific recommendations. Included was the importance of educational interventions focusing on functional academic skill development for improving Brad's ability to transition to a work environment. The Report stressed the need to provide close one-on-one guided support at the beginning of learning on new tasks so that as the task becomes more familiar and routine he might become more independent in execution of the task. The final sentence of the narrative portion of the Miller Report highlighted that "the primary consideration for interventions with Bradley should be to help him develop functional communication and academic skills, and work/social behaviors that he will need to achieve his highest level of independence in the future." A long list of specific recommended modifications, accommodations, strategies, and supports in the academic area were provided at the conclusion of the Miller Report. On two occasions (8th and 10th grade) Dr. Miller visited the MCCSD High School to assist teachers in understanding Brad's learning style. Brad's parents stated that they did not believe that the school staff understood Brad's unique learning needs and did not change in their teaching approach to meet his needs.

The Miller Report noted that Brad had been receiving special education support with "goals" in his IEP involving improving reading comprehension skills, written expression skills, basic math skills, and community mobility skills. The Miller Report indicates existing school IEP goals regarding "Social skills, life planning skills and independent work skills," but those goals were not found by the undersigned ALJ in IEPs in the record from the eighth grade IEP (9-19-01) to the present. The eighth grade IEP did note that for transition planning that Brad would like to work at a HyVee grocery store. The transition planning form at that time indicated that "he will need classes that provide life skills and prepare him to enter into competitive employment." The form also noted that special education classes that parallel general education classes (pull-out) could provide Brad with academic knowledge to help him succeed. Later IEPs contained mostly academic skills acquisition, a little regarding vocational skills and nothing regarding social skills or life planning skills. Little, if any, specific attention to social skills, life planning skills, daily living skills, or independent vocational skills are found in the IEP documentation in the record.

The Miller Report noted that Brad was beginning to become involved in programs provided by the Department of Vocational Rehabilitation (VR), and that part of the goal of the VR would be to help Brad develop job skills during the remaining years of high school. This statement was made at a time when the MCCSD was planning on only one more year of education for Brad at the high school. No vocational assessments have been given Brad to determine vocational skills needed. A vocational interest inventory was taken by Brad in 10th grade and in April 2006, six weeks prior to his planned graduation.

A transition form completed in junior high school and dated September 19, 2001, noted that "community experiences" would not be provided at that time; "This will be addressed in high school." The same comment was made regarding the provision of activities and services to develop employment and other post-high school adult living objectives. In response to the form's inquiry regarding the need to develop "daily living skills," the form stated that Brad would work with an orientation and mobility specialist and the rest would be obtained through some of his high school classes. The question asking about the desirability of a functional vocational assessment was answered in the negative, and the form concluded that he would participate in unspecified "regular" vocational education. Graduation criteria were not documented.

Fifteen specific accommodations, modifications and adaptations in the education environment were identified for Brad in the 2001 IEP, including extra time for assignments, use of a spell-checker and grammar checker for written work on a computer, and preferential seating due to his vision impairments. He was expected to participate in a modified physical education program. Brad's removal from regular education was 73 per cent of the time. The only other two IEPs in the record that indicated Brad's removal from regular education stated that it was 86 and 84 percent of the time. Clearly most educational programs and services were provided in segregated settings.

Socially, Brad had been involved with Special Olympics, "Best Buddies," a community service program called "Silver Cord," and had served as a manager of the school trap-shooting team for two years. The Miller Report noted that although Brad enjoyed activities which involved his peers, he had difficulty developing friendships. Testimony of Brad's mother indicated that Brad does not receive telephone calls at home from peers. Brad stated during testimony that he had no friends.

On June 6, 2006, about six weeks after the filing of the Request for Due Process Hearing in this matter, Brad was evaluated at the Center for Disabilities and Development (CDD) at the University of Iowa on an outpatient basis. Evaluations conducted placed Brad in the "mild mental retardation range" with adaptive behaviors consistent with that level of functioning. The report noted that some math and comprehension skills were below the low average to borderline range. The report was consistent with and complimentary of the Miller Report and stated that the "helpful and comprehensive list of recommendations" in the Report was impressive. The CDD report concluded that "[g]iven that he is not yet 21 years old, he would seem to be an excellent candidate for a 'transition' program that focuses on teaching life skills and vocational skills to improve his ability to function as independently as possible as an adult."

The specific recommendations of the CDD report, conducted less than ten days following Brad's planned date for graduation from high school and the planned end of the MCCSD educational responsibilities under the IDEA, noted that the "current evaluation" indicated continuing cognitive and adaptive deficits that support the "need for additional educational experiences for Bradley." The CDD report specifically recommended that Bradley "receive training through a transition program that emphasizes vocational and life skills" (emphasis added). Clearly the

evaluators at CDD did not believe that Brad had yet acquired the vocational and life skills that he was capable of acquiring.

In a telephone testimony for the Due Process hearing, Dr. Miller stated that he had read the CDD report and agreed with its recommendation regarding the need for Brad to receive additional transitional services emphasizing vocational and life skills. He stated that while Brad had good language skills, his perceptual-motor skills (hands on) and executive functioning skills (organizing what needs to be done) needs great improvement. He testified that Brad can articulate what needs to be done, but he cannot organize how to get it done. Dr. Miller noted that Brad's IEP goals had not adequately covered needed life skills, social skills and vocational skills to assist him to function independently.

Bradley's individual education programs (IEPs) for grades eight through twelve were in the hearing record. The family and student vision stated in those IEPs usually involved Brad obtaining employment and eventually living somewhat independently. All IEPs contained the provision of mobility services due to his visual impairment, adaptive physical education, and academic course work being provided in special education pull-out class environments. His determined level of need for education services and weighting for funding those services was determined to be Level II.

There were remarkable differences in quality of the early IEP documents in the record (grades 7-9) and those of later years in high school. Goals and objectives became less definitive and, except for mobility goals, there was no noticeable use of clear and objective criteria in making decisions regarding Brad's progress on IEP goals. A few examples may suffice in demonstrating the differences.

Each high school IEP goal page was taken from a state model IEP form, and the form stated in detail what the appropriate goal content and monitoring criteria should include. Goals in IEPs should be written to include the when and how the student will demonstrate goal performance, what the student will do, and the expected level of performance. Educational literature identifies characteristics of well written goals to include their being meaningful, measurable, able to be monitored for progress, and they are well written so as to enhance good decision making. Educators must be able to provide parents with accurate and authentic assessment of a student's progress on a regular basis, and educators must be able to determine when adjustments to IEP goals should be considered. It is often sometimes said that a well written IEP goal must pass the "stranger" test. Could a stranger to the IEP goal be able to implement the goal, be able to implement the assessment of student's progress on the goal, and be able to determine whether the student's progress was satisfactory.

The reading comprehension goal in Bradley's September 19, 2001, (8th grade) IEP meets the criteria of a well designed goal:

In 36 weeks of school, when given material to read, such as SRA leveled material, Brad will read level 7.5 (middle of 7th grade) material with 80% comprehension.

The monitoring objectives listed with that goal are 80% comprehension at the 6.75 grade level at the end of the first quarter of the covered school year, 7.0 grade level at the end of the next quarter, 7.25 grade level at the end of the next quarter, 7.25 grade level maintained midway through the fourth and final quarter, and 7.5 grade level by the end of the fourth quarter. The report summary of the goal in the September 18, 2002, IEP indicates that the goal was not met, but performance had improved (p. 3) to the 7.25 grade level with 80% comprehension. The detailed progress report provides specific data as to the reading level and percent of comprehension at each of the benchmark times stated for measuring progress on the IEP goal. Anyone can quickly determine from that report that Brad improved his reading level from the 6.75 grade level to 7.25 grade level with 80% comprehension by the end of school time specified in the 2001 IEP.

The IEP goal objective and assessment detail for reading comprehension is also provided in the report of Brad's 2000 IEP comprehension goal found attached to the September 19, 2001, IEP, but the monitoring assessments were graphed for visual reference and easy understanding of the data.

In high school, the stated goals and monitoring criterion were less consistent and clear, and it became impossible to objectively demonstrate performance success. In the September 18, 2002, IEP for Bradley (ninth grade), the goal in reading comprehension read as follows:

In 36 weeks, given a variety of reading assignments Bradley will read to comprehend at 80% based on the 6 traits of reading.

In the September 23, 2003, IEP (tenth grade) Bradley's reading comprehension goal read as follows:

Given a variety of materials to read, Bradley will demonstrate comprehension to 80% accuracy according to the grading criteria.

The two short-term objectives for monitoring purposes for the four school year quarters in these IEPs were "Bradley will demonstrate comprehension by answering questions based on the material content;" and "Bradley will show comprehension by completing extended projects and activities to 80% according to grading criteria."

In the September 23, 2004, IEP (eleventh grade), Bradley's reading comprehension goal and monitoring objectives were unchanged from the previous year. In the September 23, 2005, IEP (twelfth grade) Bradley's "measurable annual goal" read as follows:

In the time remaining when given a variety of reading material, Brad will demonstrate reading comprehension with 90% accuracy or better when discussing what was read and completing reading comprehension activities.

The record discloses both through testimony, and on the face of some of the IEPs, that the actual monitoring of progress on these IEP reading comprehension goals, and most of Brad's other IEP

goals in high school, were not monitored through the use of clearly established objective measures of expected performance. Instead, decisions were made based on "current grades" Brad received in academic classes, regardless of the specific class activities or content involved, and through informal discussions among faculty members.

Only the mobility annual goals and some of the goals for physical education were properly drafted and monitored and appeared to provide valid assessment of Bradley's progress.

Brad's first vocational goal appeared in the September 24, 2003 (10th grade), IEP in a handwritten page "D." The goal stated that "Brad will develop functional communication skills and independence in a vocational setting." Short-term objectives were that, "Brad will be able to communicate appropriately with co-workers," and "Brad will be able to follow directions and redirect when proposed by supervisor." There was no attempt to fulfill this goal and no vocational setting was provided until January 31, 2005. Beginning with the January 20, 2005, IEP (age 17, and 16 months prior to anticipated graduation) the first and only operational employment skills goal appeared in the IEP:

In 36 weeks, Brad will accept criticism, follow directions and ask appropriate questions for direction Brad will be evaluated using Matthews rating scale.

Levels of performance identified were acceptance of criticism 70% of each opportunity, acceptance of feedback and follows direction 100% of each opportunity, and asks questions for direction each opportunity (no progress criterion). That same IEP acknowledged that Brad had not previously experienced any employment settings and "does not have job-entry level skills" (emphasis added).

That same school term, Brad was enrolled for the first time in the Experience Based Career Exploration class (EBCE). The one page syllabus indicates that the half-credit course is offered to students "to identify and seek a career plan; Students will be expected to develop skills in seeking and keeping a career in the world of work that matches their strengths and interests." Testimony indicated that a variety of job preparation activities were discussed in the class which met every other day, including job interviews. Mock job interviews and student critiques of the mock job interview were included in class activities. Academic performance on tests and projects made up 80% of the final grade. Brad received a letter grade of "B" for the class. An accompanying EBCE course for two course credits (also with a one page syllabus) offered nonpaid exploratory "hands on" job training at community based job sites for six to twelve weeks each. The student's grade was to be determined using a "Matthew's rating scale." The one page syllabus for the second EBCE course was nearly identical to the first, but it expressly noted student expectations of punctuality, and communicating appropriately with coworkers, as did Brad's the new IEP vocational skills goal. Student evaluation in the exploratory course was to be determined by a Matthew's rating scale. Brad received a grade of "C:" for the two credits.

Normally the EBCE class and the EBCE on job site experiences are two semesters each. There is nothing in the record to establish why Brad was enrolled in the two courses only in the second semester of the 2004-2005 school year.

Brad's first exploratory job placement in the EBCE course was with a sign company for about nine weeks, mostly in February and March 2005. For one to two hours a day, five days a week, Brad worked on designing signs using computer software and assisting in the production of signs designed by others. Only one of his sign designs, one for personal use, was ever produced. Evaluations were performed by the supervising employer three times during the time period by marking on a scale ranging from "needs improvement" to "excellent." Two different types of forms were used. The concluding statement of the supervising employer indicated that "visual impairment and limited cognitive skills would be a barrier to employment." Yet, the overall scores on the three evaluations was "average" or "good" depending on the form used. Neither the MCCSD nor the AEA staff appeared on the job site to conduct a personal evaluation of Brad or to coach Brad while he was there. The AEA Work Experience Coordinator did visit the placement site to have the job supervisor complete evaluation forms. Only the supervising employer was directly involved with Brad's training and evaluation while on the jobsite.

For the remaining six weeks of the 2004-2005 school year, Brad was placed at a HyVee grocery store where he worked as a "stocker" in the dairy department. He would stock the empty or partially empty shelves with new product and straighten up the dairy products on the shelves. He also performed some unspecified "cleaning" activities. His supervisor evaluated Brad three times during his tenure at the grocery store, and Brad's evaluations averaged "good" or "average" depending on the form used. The supervisor at the store indicated on the summative third evaluation that he would recommend Brad for a job on a regular basis. The Work Experience Coordinator testified that the HyVee supervisor had told him that Brad was not ready for "gainful employment." In early February, 2006, Brad applied for a regular part-time job at another HyVee grocery store and he was not hired. Neither the MCCSD nor AEA staff appeared on the grocery store job site to directly conduct an evaluation of Brad or to coach him in his job performance. The grocery store supervisor was the sole source of instruction and evaluation for Brad's on-the-job experience.

For the 2005-2006 school year, Brad's senior year, Brad was enrolled in the On the Job Training (OJT) course for two credits each semester. For about 45 minutes each school day during the 2005-2006 school year, Brad's job was to stock shelves for bottled water and fruit drinks in the high school cafeteria. Over the months, the supervisor's evaluations of Brad's approximately monthly performance were mixed, but by the end of the school year Brad's assessments were clearly in the "average range." Brad's supervisor in the cafeteria testified that while Brad did agree to participate in some optional work activities, he also declined to do other optional work activities. His supervisor testified that Brad seemed to enjoy his job. Brad's parents testified, however, that at home he complained to them that the job was boring and he expressed a strong desire to have a different job. The cafeteria supervisor stated the AEA work coordinator frequently visited Brad at his work site in the high school cafeteria.

Brad's parents asked the AEA Work Experience Coordinator about other potential OJT placements for Brad. Brad was identified as a candidate for placement with a graphic design business in the second semester of his senior year, something very close to his sometimes expressed career interest as an artist/cartoonist. The prospective supervisor, after an interview,

did not think Brad's work skills would justify his being paid. Brad declined to take an unpaid job, even in an area of career interest to him. Brad also interviewed for a position packaging archery supplies and equipment for shipment to retailers, but the prospective employer did not offer Brad a position. He told the Work Experience Coordinator that he did not believe that Brad was ready for that kind of work.

Brad's September 23, 2005, IEP (twelfth grade) had altered the employment goal and progress criteria somewhat:

In 36 weeks, Brad will improve on the ability to be punctual, communicate with supervisor/co-workers documented by good or better rating of 80% compliance ... On-the-job assessments will be administered not less than quarterly.

Brad's quarterly assessments under this last IEP were rated at exactly 80% for the first, second, third and fourth quarter. It is unclear in the record how the 80% compliance criteria was obtained from the cafeteria supervisor's evaluation forms which provided for indications of "needs improvement," "average," and "excellent" categories.

The record discloses that the MCCSD and AEA staff did not ever assess Brad's vocational skills or develop a "concrete realistic" vocational skills plan for Brad.

The first IEP meeting attended by a staff member of the Department of Vocational Rehabilitation was that held on September 23, 2004. For that date the IEP has a "yes" box marked in the "special considerations" to be addressed in developing this IEP section for "Functional Vocational Assessment." That same "yes" box for "special considerations to be addressed in developing this IEP" was also marked on the January 20, 2005 IEP form. Both model forms have the following statement: "Include or attach appropriate information for any 'Yes.'" There is no written discussion or explanation of the "yes" marked boxes. The record does not show that a functional vocational assessment was ever conducted for Brad.

The Work Experience Coordinator and Associate Principal testified that Brad had taken a career interest assessment in tenth grade. The assessment, called "The Plan," was administered to all students in the 10th grade in the MCCSD High School. The Work Experience Coordinator testified that Brad showed a high interest in a career in art and the results were "reviewed" with Brad.

The Work Experience Coordinator testified that functional vocational skills were not ever assessed by the MCCSD, but were expected to be done elsewhere by other agencies, such as Vocational Rehabilitation. He stated that the functional vocational skills assessment, when done, usually occurs between the eleventh and twelfth grades.

Both the January 20, 2005, and the September 23, 2005, IEPs have the affirmative boxes marked regarding "Are extended school year (ESY) services required?" There are no comments regarding ESY in the first IEP, but the second states that the goal to which the ESY need is attributed as "Responsibility and Independence." These may refer to orientation and mobilities

goals, but the record is unclear. The record did not mention the provision of ESY services to Brad.

At a March 10, 2006, IEP Team meeting, Brad's parents expressed concern that Brad was not "ready for the real world." They stated that he had "no job skills, no interview skills, and no exposure to the real world" (Ex. 8). Brad's parents informed the team that they had obtained legal guardianship over their eighteen-year-old son, due to their concern that he was incapable of making important rational legal decisions on his own behalf. When they asked about potential OJT job placements, Brad's parents were told a placement had been lined up in graphic arts, but Brad declined because he would not be paid. They were told that the person conducting the archery supply placement interview did not feel that Brad was prepared for the type of work required. Brad's parents challenged the scoring and reporting of progress on his IEP goals and objectives for the previous quarter. They were told that the report of Brad's making progress but not yet meeting the employment skills goal was determined informally through general conversations among faculty. Brad's father noted that nearly every goal on Brad's IEPs for nearly every quarter reporting period had the same level of progress reported. They testified that they were concerned that no "proof" existed that IEP goals had been met, except for orientation and mobility and functional mathematics.

Brad's parents complained that Brad's job interview skills were not good, and that he had no "life skills" such as financial budgeting and banking skills. The educators present stated that life skills had been covered in mathematics and economics classes and interview skills were taught in the EBCE class. The parents testified that they had regularly expressed concerns regarding independent living skills. Several "vision statements" in IEPs had referred to independent living, but no IEP goals were written regarding living skills.

It was at the March 10, 2006, IEP meeting that a "new form" to assist students in transitioning to post high school life was shared and consideration of the new transition process was begun. This is the meeting where it was also noted that the AEA Work Experience Coordinator had a "variety of transition instruments" that could be used to evaluate Brad, even though it was only six weeks prior to Brad's expected high school graduation.

No transition or vocational assessment, except the tenth grade career interest assessment given to all tenth grade students, was provided Brad before April 13, 2006, about six weeks prior to his planned graduation. On April 13, Brad completed an "Interest Profiler," designed to help identify a person's strongest work-related areas of interest, through Vocational Rehabilitation. It was determined from the assessment that occupations linked to Brad's interest areas were not being an artist or cartoonist, but were counter attendant, waiter, and nurse aide, orderly, or attendant. Brad, at the time, expressed an interest in investigating a career as a "nurse's aide." In hearing testimony Brad stated that he considers art to be a hobby, not a career interest. He stated that it was difficult making a living as an artist.

While many experts in the area of transition planning encourage readiness activities and career exploration in grades as early as elementary school, the MCCSD chose to not begin Brad's career exploration and experience until he was nearly finished with his high school years. As stated

previously, the January 20, 2005 IEP, developed about 16 months prior to Brad's expected graduation, contained Brad's first operational career exploration goal.

The MCCSD Director of Special Education noted at the conclusion of the March 10 meeting that all of Brad's secondary IEP goals had been met or were nearly completed. It was stated in the minutes of March 10 meeting that the Director of Special Education "pointed out the school's job is to address secondary issues." The inference was, as stated by him during testimony, that adult service agencies would provide transition services to students with disabilities. The team agreed to meet a few weeks later on April 15.

The April 15 meeting appears to have been more heated than that of March 10. The meeting opened with a discussion of the teaching of job interview skills in the EBCE class. It was agreed that the teacher of that class would provide Brad with refresher sessions on interviewing for jobs.

The mobility instructor provided through the AEA reported that Brad's vision may not any longer qualify him for orientation and mobility services based on current state standards. The mobility specialist opined that Brad's skills had improved considerably during his years working with Brad.

The discussion turned to several transition programs that might be available to students in Brad's situation, but provided by other agencies such as community colleges, the Iowa Braille School, and some special programs in Minnesota. Brad's parents had investigated a number of programs and had visited several of the programs with Brad.

Brad and his parents especially liked the Vocational Education for Special Students (VESS) program provided through the joint effort of Iowa Central Community College, Prairie Lakes Area Education Agency and local school districts. The purpose of the VESS program is to provide "job specific skill training" for individuals between the ages of 17 and 21 to enter the competitive work force, as well as other transition components such as academic tutoring, social skills development, independent living skills, personal finance skills, skills needed to find and keep a job, leisure activities, cooking and nutrition, and special services determined on an individual basis, such as for vision impaired students. Students involved in VESS could live in a dormitory and receive life skills and social skills training.

Over two dozen specific career programs are available through VESS, including that of nursing assistant. Almost three dozen community based vocational training sites are available for hands-on experience.

Students placed in the VESS program do not graduate from high school, but are maintained on their home school district's enrollment count for generation of weighted revenues to pay the cost of program tuition and related expenses. The VESS program services continue to be provided only under IEPs. Graduation from high school would make a person ineligible for the VESS program (Ex. 21).

At the conclusion of the April 15 meeting, the MCCSD Director of Special Education is quoted in the minutes of the meeting as saying "I guess it is the opinion of the IEP team that Brad is ready to graduate." Brad's parents rose and left the meeting with Brad's father being quoted as saying "You will hear more from us." Obviously the IEP team was not in agreement about its opinion that Brad was ready to graduate. The team had not yet formally determined that Brad had adequately met his IEP goals. Brad had obtained 51 course credits toward graduation, and the MCCSD required a minimum of 40 credits.

On April 25, 2006, Brad's Parent's "Request for a Due Process Hearing" was filed with the Department. The stated proposed resolution of the problem was that Brad would remain enrolled as a student in the MCCSD until his IEP goals were met, transitional services and graduation requirements were met, and that the MCCSD provide Brad with transitional services through the VESS program.

In a letter dated May 1, 2006, the Attorney for the MCCSD advised Brad's parents' Attorney that Brad was eligible to graduate on May 28, 2006, and his special education services would end. The MCCSD Attorney stated in the letter to Brad's parents that Brad will have earned the 40 credits which are required for graduation (a minimum), and that Brad has met his "Special Education Goals and Objectives." The letter concluded that the MCCSD had considered extended time transition programs, including VESS, and that they were rejected because Brad "has or will meet the school graduation criteria." The letter concluded that "Brad can work on his post-secondary living, learning and transition through post-secondary programs through Vocational Rehabilitation Services."

The MCCSD through its statements, practices and reasonable inferences attempt to meet state and federal special education transition planning and services requirements for all students with disabilities through its common curriculum offerings. The MCCSD Director of Special Education testified that no students in the District should need additional transition programming (sometimes referred to as fifth year programming) beyond what they receive in the District because the MCCSD can meet their needs. He stated that classroom teachers would have provided living skills help, if needed and asked. He stated that MCCSD programming for Brad was based on his needs, and any further programming could be received from adult service agencies. The Associate Principal concluded in testimony that Brad needs to graduate and "move on." She also testified that life skills can be taught in the home. Brad's mother earlier had noted that some life skills, such as doing laundry were experienced in the home, but she and her husband were not trained as teachers with the necessary teaching skills.

Several witnesses for the MCCSD and AEA testified that the parents had never requested assessments for transitional or vocational services. An AEA regional administrator stated that vocational skill development is available through adult service providers.

This ALJ notes that the record appears to establish that many desirable transition practices and concepts are found in the curriculum of the special education pull-out classes, the vocational preparation and exploratory classes, and the opportunity for participation in activities.

By and large, the MCCSD, and AEA staff members involved with Brad's evaluation appeared to be caring educators. Even questionable decisions, such as Brad's taking pre-algebra, when he had completed functional mathematics courses, against the recommendation of the Miller Report, and placement in general education classes involving creation of Internet Web sites and Photo Imaging in which Brad struggled greatly (even with supports and accommodations) were based in some positive rationale.

A second representative of an outside agency, the Department of Human Services, began working with Brad in April, 2006. He testified that there were several nonresidential programs that could assist Brad with transitioning, if Brad was found to qualify. Applications for eligibility had been made by Brad's parents, but eligibility had not yet been determined. The DHS staff member stated that graduation from school status would not be relevant to eligibility for these programs.

Testimony presented at hearing indicated that the MCCSD has previously had only three students receive transition services under IEPs provided by a program other than the MCCSD. Two occurred in 1994-1995 as a result of due process hearing decisions "acquiesced" in by the MCCSD. They were both served in the VESS program. At least one of these students continued for a second year. A third student was provided a program during the 2005-2006 school year at another program provided by Iowa Lakes Community College.

On May 25, 2006, three days prior to Brad's previously planned graduation, the IEP team, including Brad and his parents, met. A state model form entitled "Summary for Post-Secondary Living, Learning, and Working" was filled out. Under the provision for "Post-Secondary Expectations" were three categories: Living, Learning, and Working. Hand written comments under the "Living" portion was, "Brad would like to become more self-reliant possibly in a supervised apt setting." Under "Learning" was the following statement, "Brad would like to attend college and major in art" (contrary to the findings of the more recent career interest inventory). Under "Working" was, "Brad would like to find a job where he could apply his art skills" (contrary to Brad's testimony at hearing).

Listed on the form for "Goal Areas (within three years prior to exit)" were "Mobility," "Comprehension," "Composition," and "Employment (D5)."

The portion of the form entitled "Recommendations for: (include suggestions for accommodations, linkages to adult services, other supports)," listed under "Living" was "Support for living independently (adult supervision)." Under "Learning" was "Extended time to complete assignments and repetition with new tasks; a tape recorder for note taking; use a computer for written assignments; use a planning calendar." Under the "Working" category was "Written instructions and job coaching starting a new job."

On the goal achievement report form (regarding previous IEP goals), each of the goals on "mobility," "comprehension," "composition," and "employment" were marked "Yes, goal met." The "computation" (Math) goal was previously marked as having been met.

CONCLUSIONS OF LAW

The primary issue in these proceedings involves the sometimes elusive concept of “transition.” In a general sense educational transitioning can involve any significant change in a child’s formal learning experiences, such as a change in grade level, a change in attendance centers or change from elementary education to middle school. The most important educational transition is that from life as a dependent child in preK-12 education to the world of life as an independent or semi-independent young adult. The vision for life beyond school should begin to be considered in the elementary and middle school years. By the beginning of high school, a plan should start coming together for accomplishing specific goals that will lead a student to life as an adult. In its simplest terms, transition for students to adult life is simply helping them to identify where they would like to live, work, learn, and recreate when they become adults, and providing the supports and preparation they will need to reach their goals.

The impetus for more attention to be paid to transitioning from high school to adult life for children with disabilities first came about in the early 1980s. Undersecretary of Education Madalyn Will explained the concept of “transition” in broad terms in 1984:

Transition is bridge between the security and structure offered by the school and the opportunities and risks of adult life. Any bridge requires both a solid span and a secure foundation at either end. The transition from school to work and adult life experiences requires sound preparation in the secondary school, adequate support at the point of leaving, and secure opportunities and services, if needed, in adult situations The present definition [of transition] emphasizes the shared responsibility of all involved partners for transition success, and extends beyond traditional notions of service coordination to address the quality and appropriateness of each service area.

Although educational researchers had documented poor post-secondary outcomes for individuals with disabilities and secondary and post-secondary educators had identified “best practices” approaches, “transition” for students with disabilities was not required in the law until 1990. It was in that year also that the previously titled Education for All handicapped Children Act was renamed to the Individuals with Disabilities Education Act (IDEA). By 1990 the legal concept of transition had been broadened to include employment, post-secondary education and training, being actively involved in the community, and experiencing important and satisfying personal and social relationships.

The 1997 Amendment to the IDEA required that beginning at age 14, and updated annually, each student’s individualized education program (IEP) contain “a statement of the transition service needs of the child . . . that focuses on the child’s courses of study . . . , and beginning at age 16 (or younger if determined appropriate by the IEP) a statement of needed transition services for the child, including when appropriate, a statement of interagency responsibilities or any needed linkages.” (20 U.S.C. §§ 1414(d)(1)(A)(vii)(I) and (II)).

Those statutory provisions were further amended in December, 2004 (effective July 1, 2005) to require that IEPs contain “beginning not later than the first IEP to be in effect when the child is

16, and updated annually thereafter—appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; the transition services (including courses of study) needed to assist the child in reaching those goals; ... (§ 1414(d)(1)(A)(i)VIII).

The definition of “transition services” from the 2004 Amendments to the IDEA is extensive and reads as follows:

The term “transition services” means a coordinated set of activities for a child with a disability that—

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (included supported employment), continuing and adult education, adult services, independent living, or community participation:

(B) is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluations [20 U.S.C. § 1402 (34)].

That definition is largely unchanged from the 1997 Amendments to the IDEA [20 U.S.C. § 1401 (30)].

The primary difference between the transition requirements of the 1997 and 2004 Amendments are the removal of age 14 transition needs focusing on courses of study, although “courses of study” remains as a “transition service,” the requirement change that transition is to be included in the IEP “to be in effect” when the child is 16,” as opposed to the previous “beginning at age 16,” and most importantly for our purposes here, the specific new requirement that IEPs contain “appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate independent living skills, ...”

Failure to Provide FAPE

The undersigned ALJ hereby finds that the MCCSD has failed to provide Brad B. With a free appropriate public education as a result of its failing to comply with the 2004 Amendments to the IDEA provisions related to transition planning, programming and assessment.

Brad B. was sixteen years of age on December 4, 2004, when the 2004 Amendments to the IDEA were signed into law by President Bush. Although the law did not become effective for seven months, educators and all others interested in special education scrambled to learn its content and identify changes. It is not reasonable, however, to expect Brad B.’s IEP of January 20, 2005, to include attention to changes brought about by the 2004 Amendments, even though he was sixteen

years of age at the time. There were, however, four IEP meetings subsequent to July 1, 2005 (9-23-05, 3-10-06, 4-5-06, and 5-25-06). Questions of Brad's readiness for transition and about assessment were discussed at those IEP meetings subsequent to July 1, 2005. It was incumbent upon the MCCSD staff to stop and reflect upon the new legal requirements of the IDEA and the school's responsibilities to students. Instead, the staff members of the MCCSD and the AEA appeared to lower their heads and move forward without adequate consideration of "measurable postsecondary goals based upon age appropriate transition assessments" This was even in the face of parental allegations that Brad was not prepared for gainful or other employment and that he had not acquired independent living skills.

The only two assessments that were conducted that may be considered formal transition assessments were two career interest inventories, one conducted in the 10th grade and the other one in April, 2006. They apparently had inconsistent results and they were not apparently related to any of Brad's IEP goals.

While it may be that a well designed set of courses and experiences may include much of what students with disabilities will need as a "bridge" during that important time of transition from school to adulthood, it is not likely possible that any curriculum can be designed to meet the needs of ALL students with disabilities. To think such a probability is to ignore the words "individual" in IDEA and IEP, and to do so is both illegal and unethical.

The form filled out by the IEP team on May 5, 2006, was much too late to really be of value to Brad, his parents, or the MCCSD, and it did not contain "appropriate measurable postsecondary goals," and did not base those goals "upon age appropriate transition assessments."

The only justification alleged in the record for not providing transition assessments to Brad were that Brad's parents had not requested them and that adult service agencies, such as Vocational Rehabilitation, were expected to do the assessments. The bottom line is that transition assessments were not done in a timely fashion and were not done at all. The IDEA places responsibility on the state and the local school districts for noncompliance with its mandates, not parents and other service agencies. The buck stops there.

In 1996 the Iowa Department of Education published the book Infusing Transition Into Individual Education Programs. The publication provided a list of recommended competencies that should be considered for mastery by a student with disabilities for independent living as an adult. Its purpose was to assist IEP teams planning for transition assessment and planning. The list included, with a brief explanation of each of the following:

- Self determination;
- Mobility;
- Health, and Physical Care;
- Money Management;
- Social Interaction;
- Work Place Readiness;
- Occupational Specific Skills;

Academic and Lifelong Learning; and
Leisure.

Educational literature abounds with curricular and best practices recommendations in all of these areas. No reasonable explanation for not assessing Brad's needs in any of these areas or developing "appropriate measureable goals" appears in the record of this hearing.

The undersigned ALJ has been persuaded by the testimony of Dr. Jonathan Miller and the report of the Center for Disabilities and Development dated June 6, 2006, that Brad B. is likely to need additional transition services. While those two sources believe that Brad's transition services should emphasize vocational and life skills, the lack of age appropriate transition assessments by the MCCSD leads this ALJ to direct the IEP team and outside consultants to consider the desirability of transition assessments and potential measurable postsecondary goals in all relevant areas of concern.

The "new" transition form mentioned in the April 15, IEP meeting minutes, and completed on May 25, 2006, may in fact serve an entirely different purpose. The 2004 Amendments to the IDEA require local school districts to provide students expecting to graduate a "summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals" [20 U.S.C. § 1414(c)(5)]. The form completed and attached to the May 25, 2006, IEP meeting minutes seems to more likely contain content called for in the summary of Brad's academic achievement and functional performance than anything similar to "measurable postsecondary goals" required to be part of IEP content.

The undersigned ALJ hereby finds that the MCCSD has failed to provide Brad B. with a free appropriate public education as a result of its failure to provide him with a "functional vocational evaluation" as called for in at least two IEPs and Brad's individual circumstances. The IEPs of September 23, 2004, and January 20, 2005, when Brad was 15 years of age, were both marked in the affirmative on "functional vocational evaluation" as a special consideration to be addressed in developing the IEPs. Brad's expressed career interests did not seem to some persons to be appropriate given his complex learning situation resulting from several surgeries. The IDEA at that time expressly included "functional vocational evaluation" as a "transition service" [20 U.S.C.S. § 1401(30)].

Brad's career exploration began less than 18 months prior to his then anticipated date of graduation. His career exploration and training for choosing, seeking, obtaining and holding a job were about half the normal length of time for other MCCSD students. His OJT experience of a school year stacking the water and fruit drink coolers for 45 minutes a day in the school cafeteria was inadequate. All these experiences should have raised many questions regarding Brad's skills and aptitudes for employment. The purpose of transition assessments is to establish a student's existing strengths and needs in order to attempt to build a program that will meet his or her needs for the purpose of increasing the likelihood that the transition time and experience will be successful. Not having good data on which to individualize student programs greatly diminishes the likelihood of a successful transition.

The undersigned ALJ hereby finds that MCCSD has failed to provide Brad B with a free appropriate public education as a result of many incomplete and poorly developed IEP goals and objectives and the resulting questionable assessment of progress on those goals in the September 23, 2003; September 24, 2004; January 20, 2005; September 23, 2005; and May 25, 2006 IEPs for Brad B. Most of the goals, especially for composition, comprehension, and employment in those IEPs left this ALJ wondering when and how the student was to perform, what he was expected to do and what the real acceptable level of performance was. There may possibly be times when the "by guess and by gosh" method of determining student progress on IEP goals is acceptable, but this ALJ cannot now think of any. That method certainly does not apply well to this student or to his goals. It is no wonder that Brad's parents on May 25, 2006, asked for evidence and data that Brad had suddenly met all of his IEP goals, but they received none.

DECISION

The undersigned ALJ finds that the record does not establish that Brad B. has met the terms, conditions, and the level of acceptable performance of many of his IEP goals. He further finds that Brad's parents' request for consideration of additional transition services has not been met. He further finds that while Brad B. may have accumulated the minimum number of course credits to graduate, he should not graduate from the MCCSD high school until the currently unresolved issues in this proceeding are resolved.

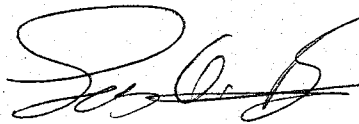
The parents' request that the MCCSD provide transitional services to Brad through the VESS program cannot be ordered at this time. The record does not contain enough data regarding Brad on which such a decision can at this time be made.

The Mason City Community School District, with appropriate assistance of Area Education Agency 267, shall organize one or more meetings of the IEP team to fully plan for the assessment and consideration of Brad's current remaining educational needs and skill deficits to be addressed, if any, prior to his transitioning to posthigh school experiences. Determination of Brad's transition, and graduation status will be determined based upon Brad's determined need for appropriate "transition services" through the development and administration of "appropriate measurable postsecondary goals" based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills. The Mason City Community School District will involve a minimum of two outside consultants in the determination of "age appropriate transition assessments," and "appropriate postsecondary goals." The IEP team members, including Brad and his parents, will have direct access to the consultants for discussion of their recommendations. There are a number of excellent resource persons available, including the transition specialist at the Iowa Department of Education, similar persons with expertise at the federally funded Regional Resource Centers, and special education faculty at colleges and universities. For instance, Professor Patricia Sitlington at the University of Northern Iowa is a recognized scholar in the field of transition and was the lead author of the Council for Exceptional Children's Division on Career Development and Transition's book entitled Assess for Success: Handbook on Transition Assessment a decade ago.

The IEP team and/or the placement team will determine an appropriate program and placement in which to provide "transition services" to meet Brad's newly determined "appropriate measurable postsecondary goals" based upon "age appropriate transition assessments related to training, education, employment, and where appropriate independent living skills," if any.

While Brad's parents have not been awarded their specifically requested remedy of Brad's placement in the VESS program, they have been successful in delaying Brad's graduation until the MCCSD complies with state and federal transition assessment and planning requirements, and if determined appropriate, placement in one of the many fine programs currently available to assist Iowa's school districts in meeting the transition needs of children with disabilities.

Persons and entities who are Parties to this proceeding who wish to challenge the findings and decisions in this Due Process Hearing Decision have the right to bring a civil action in any state court of competent jurisdiction or in a district court of the United States within 90 days from the date of the decision, unless the state has an explicit time limitation for bringing such action in such times as the state law allows [20 U.S.C. § 1415(i)(2)].



Larry D. Bartlett, J.D., Ph.D.
Administrative Law Judge

August 14, 2006
Date