

POLICY ADVISORY

Court Decisions in Planning for Transition

This guide explains three important court decisions about planning for transition. The first two are about your child's right to continue her early intervention services after she enrolls in preschool. The third is about your right to be reimbursed for money you spend for your child's services when the preschool doesn't meet the deadline for developing your child's education plan. All three cases deal with the [Individuals with Disabilities Education Act](#) (IDEA).

Beach Center on Disability

Making a Sustainable Difference in Quality of Life



Transition from early intervention to preschool: Services and “stay put”

Scenario:

Your child has been receiving what you consider to be appropriate services during early intervention. These services are described in her Individualized Family Services Plan (IFSP).

When you meet with the preschool staff to plan her transition from early intervention to preschool (as required by IDEA), you learn that the staff wants to eliminate some of the early intervention services. They also want to reduce the frequency of other services, substitute different services, or take other action that you believe will slow or interfere with her development. The Individualized Education Program (IEP) the school has developed for your child reduces or eliminates some of her early intervention services.

You are disappointed that the preschool staff members don't consider your perspective. You do not want your child to lose the benefit of the early intervention services she has been receiving that the school now refuses to provide. You believe the services should stay as they are — in other words, that they should “stay put.” The preschool staff disagrees. They say that their proposed services are the only ones to which your child has a right to receive.

You rely on your rights to challenge the staff's decision by seeking a ruling from a “due process hearing officer” (a person who “hears” your and the staff's arguments and decides how the law applies to the facts of the dispute).

The legal question is this: Does your child have a right to continued early intervention services, as set out in her IFSP, while you are challenging the preschool's proposed IEP?

The legal arguments

Lawyers for parents have argued that, when your child is already in the service system, a preschool must continue the services your child has been receiving while you and the preschool have a disagreement about them. They argue that your child has a right to services that “stay put” ([20 USC Sec. 1415\(j\)](#)).

On the other hand, lawyers for school boards have argued that the “stay put” provisions apply only after your child is enrolled in preschool and already has an IEP. They argue that, if your child is applying for admission to preschool for the first time and does not yet have an IEP, she doesn't have the right to have “stay put” because there is no “put” (that is, a place or a service plan) to which “stay” can apply. If there were a place or a service plan in effect, they agree that “stay put” would protect the services ([20 USC Sec. 1415\(j\)](#)).

IDEA's early intervention provisions do not specifically say that the IFSP services must continue through the IEP until you and the preschool agree. It does, however, require the IFSP to describe the steps that the IFSP team will take to support your child's transition to preschool or other services ([20 USC Sec. 1436\(d\)\(8\)](#)).

What do the courts say?

There are two inconsistent decisions.

In one, "stay put" applies. The federal court of appeals covering the states of Delaware, New Jersey, and Pennsylvania agreed with parents that the child's IFSP services should stay in place during transition. [Pardini v. Alleghany Intermediate Unit](#), 420 F. 3d 181 (3d Cir., 2005). The court decided that there is nothing in Parts B or C of the IDEA law that prevents services from "staying put" in transition situations.

In the other, "stay put" does not apply. The federal court of appeals covering the states of Florida, Georgia, and Alabama agreed with preschools that the IFSP services should not stay in place during transition. [D.P. v. School Board of Broward County](#), 483 F. 3d 725 (11th Cir., 2006). This court decided that the "stay put" rule applies only after the child has been admitted to or is eligible to be enrolled in preschool or other Part B programs.

This means that where you live determines whether or not your child has the right to "stay put" during her transition.

- If you live in Pennsylvania, New Jersey, or Delaware, your child can continue receiving the services outlined in her IFSP until you and the preschool agree to her IEP.
- If you live in Florida, Georgia, or Alabama, your child will not continue receiving the services.
- If you live in any other state, your child may or may not continue receiving the services; the schools in your state are not bound to follow either decision.

Transition and timeline for the IEP, recovering expenses

IDEA requires an IEP to be in place for a child who is transitioning to preschool services by the time she is 3 years old. But what happens if the school district misses the deadline and you have to find and pay for services on your own? Does the preschool have to reimburse you for the money you spend?

This basically is the decision that led to *Board of Education of Paxton-Buckley-Loda Unit School District 10 v. Jeff and Debbie S.*, 184 F. Supp. 790, 2002 U.S. Dis. LEXIS 2166 (D. Ill., 2002). A child was moving from early intervention to preschool. The preschool, however, failed to have an IEP ready for the child. Because the child had a new cochlear implant, the child's parents paid for a private provider to furnish services while the child was enrolled in preschool. The preschool refused to reimburse them for these services. It acknowledged that it failed to meet the deadline for developing the child's IEP, but it argued that a minor procedural violation did not require them to reimburse the parents for private services.

The federal court disagreed. The court decided that, because the transition period was a critical time for the child in implementing the cochlear implant, the child's education might have been disrupted because the preschool failed to meet its deadline to develop the child's IEP. The court ordered the preschool to reimburse the parents for the money they spent for services.

Action Steps

Keep in mind that you and your child enter an entirely different system when your child leaves early intervention (infants/toddlers, ages birth to 3) and moves to preschool, or when your child leaves preschool (ages 3 to 6) and moves to elementary school. The difference exists because Congress has established different goals for infants/toddlers, preschool students, and elementary students.

So, before your child is 3 years old, you should take the following steps:

- Identify the IFSP goals and services that you and your child's professionals think are most helpful for her development, and that you want to continue when your child enters the next level of public education.
- Be prepared to pay for the IFSP services your child needs but are not being provided by the elementary school, because your child will need them and you may be reimbursed under the *Pardini* and *Paxton* cases.
- Learn your rights to resolve any disagreements. These include your rights to mediation, to conflict-resolution meetings, and to due process hearings and appeals to court.
- Learn how to engage in those proceedings, and consider taking with you the cases we summarized above (but only if the case favors in your position).
- Ask the hearing officer (or court) to order the school to reimburse your expenses. Claim that the school's IEP does not provide "a free appropriate public education" because it withholds services your child needs in order to benefit from, participate in, and make progress in the general education curriculum. To learn about hearing officers, go to the website of a center on alternative dispute resolution, [CADRE](#).
- Be prepared to carry the "burden of proof." (It is your responsibility to prove that you are correct and the school is not when you and the school are developing your child's first IEP. That was the decision in *Schaffer v. Weast*, decided by the Supreme Court in 2005.

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Beach Center on Disability

The University of Kansas

1200 Sunnyside Avenue, 3111 Haworth Hall • Lawrence, Kansas 66045

Telephone: 785.864.7600 • TTY: 785.864.3434

www.beachcenter.org

