

# Questions and Answers: Providing Special Education Services Until Age 22

In May 2024, the 9th Circuit Court of Appeals issued a ruling in *N. D. v. Reykdal*, concluding that the availability of adult-education programs triggers an obligation under the IDEA to provide special education services to 21-year-old students eligible for special education through their 22nd birthday. You can [read the full opinion on the 9th Circuit Court's website](#).

OSPI has received multiple inquiries in response to the 9th Circuit decision. OSPI shares this Question-and-Answer document, current as of **September 29, 2024**, for Districts<sup>1</sup> and IEP teams to support team decision making during the 2024–25 school year.

As the court case proceeds and additional information is known, we will update this document with additional guidance, including topics such as data reporting, funding, and compensatory education. If you have questions, please contact Dr. Tania May, Assistant Superintendent of Special Education, at 360-725-6075, or [email OSPI Special Education](#).

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<sup>1</sup> Throughout this document, the term District is used to include all types of Local Educational Agencies (LEAs).



## **A. Provision of Services Until Age 22**

### **A-1: Why is Washington state now required to provide special education services to students eligible for special education to age 22?**

On Thursday, May 23, 2024, the 9th Circuit Court of Appeals issued a ruling relating to a preliminary injunction in *N. D. v. Reykdal*. The 9th Circuit concluded that the availability of adult-education programs triggers an obligation under the IDEA to provide special education services to 21-year-old students eligible for special education through their 22nd birthday. This ruling means that Washington state law is now in conflict with the IDEA, students eligible for special education are entitled to a free appropriate public education (FAPE) from ages “3–21, inclusive”, meaning through their 22nd birthday. OSPI will work with the Legislature to reconcile our current state law, which, per the 9th Circuit’s ruling, now conflicts with the IDEA.

### **A-2: Do special education services end on the student’s 22nd birthday, even if their birthday falls mid-year, or do services continue through the end of the school year in which the student turns 22?**

OSPI’s authority includes implementation of IDEA through age 21, which means special education services end on the student’s 22nd birthday. The 9th Circuit’s decision states students eligible for special education services can receive services until their 22nd birthday, even if that birthday falls in the middle of the school year, as long as the student’s individualized education program (IEP) team recommends, and the student has not received a high school diploma.

OSPI will work with the Legislature to reconcile our current state law, which, per the 9th Circuit’s ruling, now conflicts with the IDEA. The Legislature may determine that services will extend to the end of the school year in which a student turns 22.

### **A-2A: If a student turns 22 after the start of the 2024–25 school year, could the District decide to continue providing special education services to the student for the remainder of the term?**

Yes, a District could choose to continue providing special education services to a student who turns 22 during the 2024–25 school year until the end of the term (e.g., end of the month, quarter, semester, or school year); however, the District is not required to do so. Special education services end on the student’s 22nd birthday. A District that chooses to continue providing special education services to a student aged 22 will not be able to continue claiming the student on the monthly child count nor receive funding for the student. District leaders may need to develop on their own a fair, equitable, and transparent process for decisions about continuing services beyond a student’s 22nd birthday. Districts may also need to consult with their own legal counsel regarding such decisions.

**A-3: Should IEP teams meet at the end of the 2023–24 school year for students who are 21 and are graduating this school year?**

Yes. District partners should start identifying 21-year-old students currently receiving services and who have not been issued a diploma, and convene IEP team meetings to discuss whether the student is on track to graduate with a diploma or age out and whether the IEP team believes the student requires additional services over the summer or into the 2024–25 school year, until their 22nd birthday.

For a student receiving special education services, the IEP team determines the student's graduation plan and date based on what is in the best interest of the student for continuing their secondary education. Per the 9th Circuit's recent ruling, students who have not yet met their high school graduation requirements nor earned a high school diploma after four years are eligible for free public education until their 22nd birthday.

**A-4: What factors should an IEP team consider, to determine if a student needs services until their 22nd birthday?**

For a student receiving special education services, the student's IEP team determines the student's graduation plan and date based on what is in the best interest of the student for continuing their secondary education. Students who receive special education services graduate with a diploma when they have satisfied graduation requirements AND the IEP team determines that no additional special education or transition services are needed.

Special education and transition services for students aged 18 to 22 are individualized services, based on the student's unique, disability-related needs. The service type, provider, location and duration of special education, related services, and transition services are an individualized decision driven by the IEP process, and decisions must be based on the student's unique, disability-related needs. Transition service decisions should not be based on the District's, school's or transition program's schedule or model, nor should they be based on funding or staffing availability.

When considering whether special education and transition services are needed until age 22, the IEP team should use the same data-based decision making as an IEP team would for an 18-, 19-, or 20-year-old student for whom the IEP team is considering whether additional special education and transition services are needed. Teams should consider the student's progress on annual goals and transition goals, whether a student has met or mastered post-secondary goals, whether there is data to support a continued need for special education and transition services. Teams should consider whether a student is already connected to other agencies like the Division of Vocational Rehabilitation (DVR) and Developmental Disabilities Administration (DDA) and participating in job coaching or connected to other services, and how that impacts a potential continuing need for special education and transition services.

As a reminder, a full-day or full-week transition program may not be needed for all adult students. Many students may require more focused transition services as outlined in the IEP transition plan. Additionally, as adult students progress through their transition services, they will likely gain skills, connection to other agency services, and employment opportunities that should be considered along with student data in the IEP determination of what is needed to support FAPE.

Additional guidance and links to other resources on individualized decisions around a student's graduation plan and transition services can be found in OSPI's [April 2023 Secondary Transition Tip](#).

**A-5: What next steps should a District take if the IEP team determines services are needed until age 22?**

If a team determines that a student will continue receiving special education and transition services until age 22, the team will likely need to develop a new annual IEP for the student. The team should consider whether updated or new annual goals are required and whether the student's needs have changed; what individualized special education and transition services are needed; and how services will be provided. If a student continues to receive services until age 22, then IEP and evaluation timelines and all other special education requirements as outlined in [Chapter 392-172A](#) apply.

The 9th Circuit decision makes clear that students have a right to receive a FAPE until age 22, as determined needed by the student's IEP team. This obligation is not contingent upon the availability of current state funding. Districts should begin planning to serve students until age 22 now regardless of funding sources. OSPI will work with the legislature to support funding for this population of students.

If the IEP team determines that services are needed for a student until age 22 and the District is not able to implement those services due to staffing or funding barriers, a District should document what services are needed and the frequency of services in a prior written notice; that the District is not able to provide those services at this time; and the plan to provide those services in the future as compensatory education.

**A-5A: Can a District wait to start providing services if IEP teams determine services are needed until age 22, e.g., until the Legislature changes the state regulations or funding becomes available?**

The 9th Circuit decision makes clear that students have a right to receive a FAPE until age 22, as determined needed by the student's IEP team. Washington's state regulations are now in conflict with IDEA, and OSPI has a duty to ensure that IDEA is implemented.

OSPI will work with the Legislature during the 2025 legislative session to request funding for this population of students and changes to the regulations. However, the obligation to serve is not contingent upon the availability of current state funding or a change to the regulations. Districts should begin planning to serve students until age 22 now, regardless of funding sources.

If a District chooses to wait to begin the process of determining whether special education and transition services are needed until a student's 22nd birthday, the District will likely be required to provide compensatory education in the future and should consult with legal counsel regarding the risks around opening itself to increased dispute resolution and compensatory education obligations.

**A-5B: If a student turns 22 prior to a District's 18–21 transition "program" starting, should the District provide transition services prior to the start date of the program?**

If the IEP team determines a student requires special education and transition services until age 22, services may need to be provided prior to a District's "18–21 transition program starting" and depending on an IEP team's discussion and determination of what special education and transition services are needed and how those services will be provided, regardless of the District's transition "program" model or start date. See also, Questions A-4 and A-5.

As a reminder: Each school district must have in effect an IEP, including transition services, for every student within its jurisdiction who is eligible to receive special education services at the beginning of the school year ([WAC 392-172A-03105](#)). See the Special Education Tip on "[As the new school year begins, when must students eligible for special education and related services start receiving services?](#)" for expanded guidance on this topic.<sup>2</sup>

Transition services are individualized services based on a student's strengths, preferences, interest, and needs. They are determined by the IEP team as part of a results-oriented process focused on improving the academic and functional achievement of students with the goal of supporting movement from school to post school activities. Each IEP team should determine a student's transition services needs and how those will be provided. The service type, provider, location and duration of special education, related services, and transition services are an individualized decision driven by the IEP process and decisions must be based on the student's unique, disability related needs. This decision should not be limited by the date or scope of the District's transition program schedule or model.

**A-6: If the IEP team determines that the student has met graduation requirements and no further special education and transition services are needed, what next steps should occur?**

If an IEP team determines that a student has met graduation requirements and does not need further special education and transition services, the team should proceed with graduating the student and issuing the student's diploma. The District should document the decision and what

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<sup>2</sup> Districts are also reminded that there are times when special education services are provided outside of the District's school year, such as extended school year (ESY) services. An IEP team is also responsible for making data informed decisions regarding whether a student may require ESY services in accordance with [WAC 392-172A-02020](#). See the Special Education Tip on "[Take Data Before and Following Breaks to Prepare for IEP Team Extended School Year \(ESY\) Decisions](#)" for expanded guidance on this topic.

data were reviewed to support the decision in a prior written notice and follow all requirements in IDEA and State special education regulations for when a student leaves the school system.

**A-6A: What if the parent disagrees with the IEP team's decision that a 21-year-old student has met graduation requirements and no longer requires special education services?**

If a parent or adult student disagrees with the IEP team's decision that the student has met graduation requirements and no longer requires special education services, the parent or adult student can address their disagreement through the special education dispute resolution process. Parents and adult students can address disagreement with IEP team decisions or their belief that a District has not followed the IDEA or state special education regulations through mediation, a special education community complaint, or due process. More information about each dispute resolution option can be found on OSPI's [Dispute Resolution Webpage](#).

**A-7: What steps should Districts take if a 21-year-old student eligible for special education graduated and was issued a diploma in June 2024?**

If the student's IEP team has made an individualized, data-based determination that the student was ready to graduate in June 2024, then the District should document the student's graduation and exit from special education. See also, Question A-6. Once a student has graduated with a regular diploma, they are no longer eligible for special education services, and the District is not required to take steps to provide the student special education services per the 9th Circuit's decision.

Note, participating in a graduation ceremony is not synonymous with the issuance of a diploma. [RCW 28A.155.170](#), also known as Kevin's Law, allows students who will continue to receive special education services under an IEP between the ages of 18 and 21<sup>3</sup> to participate in the graduation ceremony and activities after four years of high school attendance with their age-appropriate peers and receive a certificate of attendance. Students who participate in graduation ceremonies will receive a certificate of attendance, which is not a high school diploma. Students may receive a diploma at a later date once they complete their graduation requirements and the IEP team has determined that no additional special education services, including transition services, are needed. The receipt of the diploma would end the student's eligibility for special education services and free appropriate public education (FAPE). Additional guidance and links to other resources on individualized decisions around a student's graduation plan and transition services can be found in OSPI's [April 2023 Secondary Transition Tip](#).

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<sup>3</sup> As noted in Question A-1 and A-2, OSPI will work with the Legislature to reconcile our current state laws that reference services until age 21, which, per the 9th Circuit's ruling, now conflicts with the IDEA.

### **A-8: How do IEP teams document that a student will receive services until age 22 in the IEP?**

Currently, IEP teams are expected to document a student's anticipated graduation date, the graduation cohort year on the IEP, and the student's transition plan. Teams should continue this practice.

## **B. Funding and Apportionment**

### **B-1: Will Districts receive funding to provide special education services to 21-year-olds who will turn 22 during the 2024–25 school year?**

The Legislature determines the biennial operating budget, in line with state law, including the criteria for state special education funding and apportionment. OSPI does not have the authority to change the budget. There is currently no funding or apportionment process to report and claim 21-year-old students who will turn 22 during the 2024–25 school year and will receive special education services. Districts should not include this population of students in the monthly enrollment reporting at this time.

The 9th Circuit ruling makes clear that students have a right to receive a FAPE until age 22, as determined needed by the student's IEP team. This obligation is not contingent upon the availability of current state funding. Districts should begin planning now to serve students until age 22, when determined to be needed by the IEP team, regardless of funding sources. OSPI will work with the legislature to support funding for this population of students.

There is precedent in special education dispute resolution processes for compensatory education services to be provided to students, on a case-by-case basis, who have received their diploma, in the event that they were denied a FAPE prior to receiving a diploma. In these instances, a District would not include a student receiving compensatory education in the monthly enrollment reporting.

### **[NEW] B-1A: How should Districts claim students who are 21 and older on their monthly count?**

For the 2024-25 school year, students who are eligible for and receiving special education services and are over the age 21 on September 1, 2024 can be claimed for state funding on both Form P-223 and P-223H until the day before their 22nd birthday. Districts can now retroactively report these students on any prior 2024-25 Form P-223 or P-223H for September through November 2024.

For Form P-223H, these students should be reported in either K-21 Tier 1 or K-21 Other Tier fields. For Form P-223, their enrollment would be reported similar to a student who is not age 21.

Currently CEDARS is unable to capture students who are over the age 21 on September 1. LEAs will be required to submit a monthly Smartsheet for these students. This Smartsheet will collect the student identification number (SSID) of the students that are over the age 21 and reported

on a monthly Form P-223H. The link to this Smartsheet is here: [Special Education Student Over Age 21 Smartsheet](#).

For more information, see the [Enrollment Handbook](#). If there are questions about the P-223 and P223H, please contact Becky McLean, [Becky.McLean@k12.wa.us](mailto:Becky.McLean@k12.wa.us).

**B-2: When can Districts start claiming Safety Net reimbursement for 21-year-old students who will turn 22 during the 2024–25 school year and will be served during the summer of 2024 and/or during the 2024–25 school year?**

Districts will be able to seek reimbursement via Safety Net for services provided during the summer of 2024 and/or during the 2024–25 school to students eligible for special education who will turn 22 during the 2024–25 Safety Net cycle. Districts will need to meet all applicable requirements for the 2024–25 Safety Net cycle including demonstrating that the District has met capacity for Safety Net funding and that the individual student applications exceed the established threshold.



**B-2A: Can Districts amend their 2023–24 safety net submission to include services provided in the summer of 2024 to 21-year-olds who will turn 22 in the 2024–25 school year?**

No, the 2023–24 Safety Net cycle cannot be reopened for Districts to amend their submissions for services provided in the summer of 2024 to 21-year-olds who will turn 22 in the 2024–25 school year. WAC 392-140-608 requires OSPI to publish a schedule of dates for the submission and review of Safety Net applications.<sup>4</sup> The 2023–24 Safety Net schedule is already complete and cannot be reopened, given that the State Oversight Committee will make conditional awards the week of June 17, 2024, and final awards in August 2024. For more information see the [Safety Net Funding Bulletin \(B070-23\)](#) which discusses allocated funding, the application process, trainings, deadlines, committee members, and more.

## **C. Graduation Requirements**

**C-1: (Also above as A-6): If the IEP team determines that the student has met graduation requirements and no further special education and transition services are needed, what next steps should occur?**

If an IEP team determines that a student has met graduation requirements and does not need further special education and transition services, the team should proceed with graduating the student and issuing the student's diploma. The District should document the decision and what data were reviewed to support the decision in a prior written notice and follow all requirements in IDEA and State special education regulations for when a student leaves the school system.

Reminder: For a student receiving special education services, the IEP team determines the student's graduation plan and date based on what is in the best interest of the student for continuing their secondary education.

In Washington, to graduate with a high school diploma students must meet the graduation requirements, which are in place for their expected graduation year (cohort). This is determined upon their entry into high school beginning their 9th grade year. To graduate with a high school diploma a student must meet the state and local requirements for their cohort which include developing a [High School and Beyond Plan \(HSBP\)](#), completing one or more [Graduation Pathways](#), and completing [high school subject area requirements](#). If a student has an IEP, an IEP team would issue a diploma once the above requirements were met AND the IEP team determined that no other special education or transition services were needed.

Full graduation guidance is published for each graduating class on the OSPI [graduation](#) webpage. Additional guidance and links to other resources on individualized decisions around a student's graduation plan and transition services can be found in OSPI's [April 2023 Secondary Transition Tip](#).

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<sup>4</sup> Note, WAC 392-140-608 also states that applications not received by the published dates and times in the bulletin will not be accepted.

**C-2: The graduation plans for our current 21-year-old graduates included meeting some graduation requirements through the 2023–24 Graduation Requirements Emergency Waiver (GREW). Are students turning 22 in September 2024 considered 2024–25 graduates and could the GREW be extended for just 2024–25 to accommodate for this change?**

Specific questions about the GREW are best directed to the Washington State Board of Education (SBE) at [SBE@k12.wa.us](mailto:SBE@k12.wa.us). You can also review the details about the GREW Program [here](#), and on the [FAQ](#). It is important to note that the GREW requires that the student was reasonably expected to graduate during the school year AND had demonstrated post-secondary preparation (see [question 4 and 8](#)). The determination that a student was reasonably expected to graduate during the school year includes the IEP team determination that no other special education or transition services were needed. If a student was turning 22 in September 2024 and was ready to graduate, they would be graduating in the 2024–25 school year. [Question 6](#) details that the emergency waiver may be granted to students graduating in the 2020–21 through 2023–24 school years. The GREW is at this time not available for students graduating in 2024–25. Please reach out to SBE for any questions or feedback related to the GREW.