

SPECIAL EDUCATION DIPLOMAS AND GRADING

A. Graduating Special Education Students – Changing Placement

Under current Massachusetts law, school committees must provide or arrange for a special education program for each school age child with special needs residing within its district. Mass. Gen. L. Chapter 71B, Section 3. A school age child is defined as "any person of ages three through twenty-one who has not attained a high school diploma or its equivalent." Chapter 71B, Section 1. Thus, a special needs child who has received a high school diploma will no longer be entitled to those services.

In Stock v. Massachusetts Hospital School, 392 Mass. 205, later proceeding, 394 Mass. 437, cert. denied, 474 U.S. 844 (1984), the plaintiff, age twenty-one, was presented with a high school diploma. This occurred without prior notice to or consent of his parents. The presentation of this diploma terminated his eligibility for special education services. The plaintiff challenged the award of his diploma. The court held that, since the plaintiff's graduation terminated his special education services, it was a "change in placement" that triggered the procedural safeguards attendant to any other contemplated change in placement. Id. at 210-211.

B. Diplomas And Grading

The Stock decision may raise the question whether it is appropriate to create a differentiated grading system for special needs students or to award a separate diploma for special needs students. With respect to grading generally, so long as school committees act in good faith in formulating and applying grading standards, courts will not second-guess their decisions. See Barnard v. Shelburne, 216 Mass. 19 (1913). As to special needs students the establishment of a differentiated grading system, in and of itself, does not pose a problem under current statutes and case law. But there are some areas of concern, however, respecting the formulation of such a system with special needs students in mind:

1. Students with special needs cannot be deprived of the opportunity to participate in the non-differentiated grading system, or the opportunity to attempt to obtain a high school diploma. Schools should be careful not to deny special needs students the opportunity to complete regular classwork, tests in a given subject, and be assigned a non-differentiated grade. However, the standards for a passing grade in a particular subject, or the requirements for the award of a diploma, need not be lowered to accommodate a special needs student, as long as the standards are based on non-discriminatory grounds. It is generally held that disabled children may be denied standard diplomas based on failure to pass a minimum competency test and that this does not constitute unlawful discrimination under the Rehabilitation Act (29 USC Section 794) or the denial of a free appropriate public education as required by the IDEA. See Rapp, Education Law, Section 10.03[5](1996); Brookhart v. Illinois State Board of Education, 697 F. 2d 179 (7th Cir. 1983).

2. The Rehabilitation Act, 29 USC Section 794, requires public schools to make reasonable accommodations, if such accommodations are possible, that would allow students with

disabilities to participate in all programs and services that are provided. Therefore, depending on the specific circumstances, the school may be required to provide some accommodation for certain cognitive disabilities, such as dyslexia, if such accommodation would allow a student to achieve a non-differentiated grade in a particular subject. Such accommodations may include, for example, readers, calculators, word processors with spell-check, audio tapes, transcriptions of oral exams, extra rest periods, a separate testing room or time extensions. Again, lowering the minimum standards for the assignment of a particular grade is not an accommodation that a school is required to make.

3. The differentiated grades should not be labeled "special needs" grades. This label, especially if the grades are denoted as such on a student's transcripts, could be deemed to be violative of the Rehabilitation Act. Instead, a school district may use a weighted grading system, whereby letter grades are assigned more or fewer points, depending on whether the course in which such grade is assigned is an advanced, honors, or basic course. The school district must not automatically assign lower grade weights to special education courses. Rather, grade weights must reflect the level of difficulty assessed on all courses, both regular and special education. Additionally, alternate grading systems should be available to all students, not just students with disabilities.

4. Parents should be notified in advance of the overall grading system, including the provision for differentiated grading or diplomas. See Rapp, Education Law, 8.03[2][d]; Stock, 392 Mass. at 210-211. When a student with a disability takes a general education course for no credit, it is permissible to exclude the student from grading and evaluate the student based on IEP objectives. In addition, at the appropriate time a student's IEP should reflect the criteria necessary for graduation and a clear transition plan.

5. School districts should be careful to note the distinction between a standard high school diploma and any alternative diplomas that could be awarded. In addition, the requirements for the award of a particular diploma must be based upon objective criteria and each diploma option must be available to all students on a nondiscriminatory basis. As noted above, the award of a standard high school diploma terminates a student's eligibility for special needs services, and these services, like any other change in placement, cannot be terminated without parental involvement.

6. Disabled students must be included in the main graduation ceremony or the same terms and conditions as are applicable to regular education students.

An opinion issued by the Chief Regional Attorney for the U.S. Department of Education's Office of for Civil Rights, which discusses the issue of differentiated grading and diplomas, along with honor roll criteria, is the source of these parents, see Letter to Runkel, 25 IDELR 307.

The language on a diploma issued to special needs student may be different from a regular education diploma but "must be similar in all significant respects." Thus, different wording on a diploma can pass muster. The wording on a differentiated diploma should be based on objective criteria such as a reference to "modified curriculum."

Additionally a decision from the Oregon equivalent of Massachusetts BSEA, reinforces the notion that local graduation standards are enforceable, and a differentiated diploma can be issued to special education students. In Oregon the agency reviewed a district policy which identified three forms of recognition of completion of high school. First, Oregon authorized what is referred to as a traditional regular education diploma; second, the district awarded an “alternative diploma” recognizing completion of minimum alternative diploma requirements and, finally, a certificate specifying the credits, competencies and attendance completed by a student who has not completed all the requirements for graduation, and has chosen to terminate their relationship with the school. See Salem-Keizer School District, 30 IDELR 1024, 1032 (1999), Oregon – SEA.