



May 30, 2019

**VIA Email Only**

Kacey Gregson  
Director of Dispute Resolution  
Arizona Department of Education  
kacey.gregson@azed.gov

Alissa Trollinger  
Deputy Associate Superintendent  
Exceptional Student Services  
alissa.trollinger@azed.gov

**Re: Inconsistency Between State Rules and ADE Technical Assistance/Federal Law**

Dear Ms. Gregson and Ms. Trollinger:

The Arizona Center for Disability Law (ACDL) is the protection and advocacy agency for persons with disabilities in the state of Arizona. As a result of this designation, we provide a variety of legal services to people with mental, physical, psychiatric, and sensory disabilities. ACDL provides substantial advocacy in the area of special education.

In February 2019, the Arizona Department of Education (ADE) released a technical assistance document titled *Questions and Answers: Graduation and Students with Disabilities* (February 2019) (hereinafter, *Graduation and Students with Disabilities*). On March 15, 2019, ADE announced through its website that the technical assistance document will be revised based on feedback from the community. ACDL appreciates ADE's efforts to provide guidance to local education agencies (LEAs) regarding graduation, and ADE's willingness to consider and incorporate the feedback of a variety of stakeholders.

While ACDL welcomes this technical assistance interpreting federal law and regulation of the graduation of students with disabilities, we have also identified inconsistencies between this technical assistance and a current Arizona Administrative Code provision, § R7-2-302(6) (the Code).

**Inconsistencies Between the Code and ADE Technical Assistance/Federal Law**

The Code states, "The local school district governing board or charter school shall be

---

5025 East Washington Street, Suite 202  
Phoenix, Arizona 85034-7437  
(602) 274-6287 (Voice) – (602) 274-6779 (Fax)

177 North Church Avenue, Suite 800  
Tucson, Arizona 85701-1119  
(520) 327-9547 (Voice) – (520) 884-0992 (Fax)

[www.azdisabilitylaw.org](http://www.azdisabilitylaw.org)

Follow us on:  Facebook  Twitter  YouTube

Kacey Gregson  
Alissa Trollinger  
May 9, 2019  
p. 2

responsible for developing a course of study and graduation requirements for all students placed in special education programs . . . .” This rule suggests that students in special education programs are not required to meet the same competency requirements as their non-disabled peers to graduate with a regular diploma, and that each LEA has the authority to modify graduation requirements for its students with disabilities.

Many LEAs in Arizona appear to interpret this rule as granting IEP teams unlimited authority to modify graduation requirements for students with disabilities. For example, Mesa Public Schools and Higley Unified School District include in their policy manuals regarding graduation requirements that, “Special Education students are required to complete the course of study as prescribed in their Individual Education Plan (IEP).” Other LEAs have policies that simply exempt students with disabilities from meeting the competency requirements that apply to non-disabled students. For example, Queen Creek Unified School District’s governing board policy manual states, “Any student who is placed in special education classes, grades nine through twelve, is eligible to receive a high school diploma without meeting state competency requirements.” Flagstaff Unified School District, Kingman Unified School District, Douglas Unified School District and Sierra Vista Unified School District have identical policies.<sup>1</sup>

In contrast with the Code and above-mentioned LEA policies, ADE’s recent technical assistance document asserts that students with disabilities must meet the competency requirements set by the Arizona State Board of Education, or more rigorous requirements set by their LEA’s governing board, in order to graduate with a regular high school diploma. *Graduation and Students with Disabilities*, at 5. The technical assistance states that a student’s individualized education program (IEP) team cannot set individualized graduation requirements for the student or independently determine that the student will receive a regular diploma. *Id.* at 6. The technical assistance cites guidance from the United States Department of Education Office of Special Education and Rehabilitative Services (OSERS), which states that “the authority to set/and or modify [graduation] standards [for all students, including students with disabilities] rests solely with the State.” Letter to White, 63 IDELR 230 (OSERS 2014).<sup>2</sup>

---

<sup>1</sup> Queen Creek Unified School District, Flagstaff Unified School District, Kingman Unified School District, Douglas Unified School District, and Sierra Vista Unified School District are all members of the Arizona School Board Association (ASBA). ASBA offers model policies to member districts. This graduation policy may have been generated by ASBA and offered as a model to all member districts. Given that over 200 school districts in Arizona are members of ASBA, this policy practice is likely widespread across the state.

<sup>2</sup> This letter addressed a then-newly passed Louisiana state law that exempted students with disabilities from achievement levels on state assessments for graduation that were applicable to students without disabilities. Additionally, the state law permitted students with disabilities to graduate with regular diplomas where they were able to complete the requirements of their IEP. Many of the concerns expressed in the OSER’s guidance are applicable to current Arizona law.

ACDL is aware of existing conflicting guidance from OSERS on this topic in Letter to Runkel, 25 IDELR 387 (OCR 1996). Letter to Runkel states that a school district is not prohibited from modifying or adjusting graduation requirements for students with disabilities consistent with the student’s IEP. However, Letter to White represents more recent guidance from OSERS than Letter to Runkel, and criticizes a Louisiana state law that is analogous to the Code, making it more relevant to the issues discussed here.

Although ACDL has concerns with ADE's technical assistance document, particularly the absence of discussion regarding reasonable accommodations and modifications for students with disabilities and lack of information about transition requirements (see our companion letter providing feedback on *Graduation and Students with Disabilities*), ACDL generally finds the technical assistance document to be more properly aligned with federal law, while the current Code is less properly aligned with federal law. Both the Elementary and Secondary Education Act (ESEA) and the Individuals with Disabilities Education Act (IDEA) require each state to apply the same challenging academic content and achievement standards to all schools and all students, including students with disabilities. 20 U.S.C. § 6311(b)(1)(B); 34 C.F.R. § 300.320(a)(2)(i).<sup>3</sup> IDEA also requires students with disabilities to be provided with a Free Appropriate Public Education (FAPE) until the age of 21 (or 22, as students with disabilities who reach the age of 22 during the regular school year shall continue to receive special education services until the end of that school year) or until they have earned a regular high school diploma. 34 C.F.R. § 300.102. Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits discrimination on the basis of disability in public entities and programs and services receiving federal financial assistance, including LEAs. 29 U.S.C. § 701, *et seq.*

### **Discriminatory Outcomes**

When LEAs lower graduation requirements for students with disabilities, they may not be applying the same challenging academic content and achievement standards to all students, in violation of ESEA and IDEA. When LEAs award regular diplomas to students with disabilities prior to age 22 solely based on total credits earned in a substantially modified curriculum, they may be denying those students a FAPE. This occurs where graduation is approved on the basis of total credit hours but the substantial modifications to the graduation requirements set the bar too low and cut off continued eligibility for FAPE, in violation of IDEA. Holding students with disabilities to different and lower standards than those to which non-disabled students are held may further constitute discrimination on the basis of disability, in violation of Section 504. The current Code allows LEAs to hold students with disabilities to “. . . different and, potentially lower, standards than students without disabilities, thus depriving them of the same opportunities to learn that are available to their non-disabled peers.” Letter to White (2014). ACDL has seen many instances in which school districts have moved forward to graduate students under 22 years who have not achieved perform basic math functions, independently perform basic activities of daily living, been unable to read or write above a primary grade level, all because the IEP team determined that they had earned the minimum number of credits for graduation.

---

<sup>3</sup> In the Analysis of Comments and Changes accompanying publication of the August 14, 2006 final IDEA Part B regulations, the U.S. Department of Education clarified the meaning of participation in the general education curriculum for children with disabilities served under the Act. The Department stated that “as the term ‘general education curriculum’ is used throughout the Act and in these regulations, the clear implication is that there is an education curriculum that is applicable to all children and that this curriculum is based on the State’s academic content standards.” Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540, 46579 (Aug. 14, 2006).

ADE has not provided sufficient rules, guidance, or enforcement to ensure that LEAs and IEP teams do not deny FAPE to students with disabilities by lowering graduation requirements to prematurely graduate such students. The development and promulgation of the *Graduation and Students with Disabilities* technical assistance document cannot, as a matter of law, replace or supersede the contrary existing Code provision, which was enacted following a review and comment period as required by the Arizona Administrative Procedures Act. ACDL contends that the lack of consistent rules and technical assistance guidance represents ADE's failure to take necessary steps to ensure eligible students with disabilities between the ages of 18 and 22 receive FAPE and are not forced to graduate before meeting the statewide graduation requirements with or without reasonable modifications.<sup>4</sup>

Additionally, allowing the Code to stand as is puts Arizona at risk of federal reproach, as experienced by Louisiana for their state law passed in 2014 which gave students' IEP teams authority to exempt students with disabilities from the graduation requirements applicable to students without disabilities. See Letter to White, 63 IDELR 230 (OSERS 2014).

Arizona's application for federal funds under Part B of the Individuals with Disabilities Education Act for the 2019 fiscal year is currently available for public review and comment. In the application, Arizona provides assurances that FAPE is made available to all children with disabilities residing in the state between the ages of 3 and 21. Existing Code and LEA practices that allow for the premature termination of FAPE for students with disabilities call this assertion into question.

It is ACDL's understanding that ADE stops providing funding to LEAs for students once the students have earned the state minimum requirement of 22 credits, without any inquiry into whether graduation requirements have been substantially lowered or modified by the IEP team in a manner that does not align with state graduation requirements or whether all transition services and IEP goals have been completed. If our understanding is correct, this lack of funding for students who have not achieved the state minimum requirement to graduate with a regular diploma does not comport with ADE's obligations under the IDEA to provide FAPE to eligible students between 18 and 22 years of age.

## **Recommendations**

ACDL recommends that ADE work with the Arizona State Board of Education to review and revise the Code to better align with federal law and guidance on this topic. The topic of

---

<sup>4</sup> In fact, according to all available federally reported special education data from ADE, no student with a disability has graduated with a "certificate" (a document other than a regular diploma) at any time from the 2013-2014 to 2016-2017 school years. This indicates that LEAs are graduating all students with regular diplomas, regardless of whether they meet State standards. In our experience, this regularly takes place when these students reach the requisite credit hours, despite often low achievement and insufficient transition services. *IDEA Part B: Exiting Data*, U.S. DEPARTMENT OF EDUCATION, <https://idc.clicdata.com/v/7rUiW6ycgArW> (last visited May 3, 2019).

Kacey Gregson  
Alissa Trollinger  
May 9, 2019  
p. 5

graduation for students with disabilities is complex. Although students with disabilities are guaranteed FAPE until the age of 22 or until they receive a regular high school diploma, students with disabilities should also be provided with reasonable accommodations and/or modifications necessary for them to access the academic content standards that are applicable to all other students and have the opportunity to earn a regular high school diploma. Holding students with disabilities to an entirely different and lower set of standards to earn a regular high school diploma constitutes discrimination, but failing to provide students with disabilities the accommodations they need to meet the State's competency requirements is also discriminatory. Therefore, state rules and ADE guidance must thoroughly examine this issue and provide sufficient guidance to LEAs to ensure compliance with federal law.<sup>5</sup> Furthermore, ADE must ensure that its funding schemes do not disincentivize school districts from serving eligible children with disabilities between 18 and 22 years of age and result in premature discontinuation of special education and transition services.

ACDL appreciates your time and attention to this matter. Please consider our feedback and recommendations on this topic. Should you have questions or need clarification about our concerns or recommendations, please do not hesitate to contact us.

Sincerely,



Rose Daly-Rooney  
Legal Director  
Arizona Center for Disability Law



Maya Abela  
Staff Attorney  
Arizona Center for Disability Law



Amanda Glass  
Staff Attorney/Legal Fellow  
Arizona Center for Disability Law

---

<sup>5</sup> For an example of a detailed and explicit code clarifying graduation requirements for students with disabilities, see TEX. ADMIN. CODE § 89.1070 (2018).

Kacey Gregson  
Alissa Trollinger  
May 9, 2019  
p. 6

A handwritten signature in cursive script, appearing to read "Renaldo Fowler".

Renaldo Fowler  
Senior Staff Advocate  
Arizona Center for Disability Law

A handwritten signature in cursive script, appearing to read "Jessica Jansepar Ross".

Jessica Jansepar Ross  
Consulting Attorney for Arizona Center for Disability Law