

LEGAL RIGHTS OF YOUNG ADULTS WITH AUTISM: TRANSITIONING INTO MAINSTREAM ADULTHOOD

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I. INTRODUCTION

In recent years, autism has emerged as an increasingly important topic of debate. While struggling to acquire rights, individuals with autism, their families, and other boisterous advocates have pushed autism to the forefront. In response, the government has recognized the seriousness of autism and has attempted to quell the public's anxiety with the passage of the Combating Autism Act¹ and the introduction of the Expanding the Promise for Individuals with Autism Act.² Such acts, along with other federal spending, provide or seek to provide over \$100 million per year in funding for research and services concerning autism.³ Some have argued that this congressional "spending surge on autism" is not warranted given the number of actual cases of autism.⁴ However, it is difficult to ignore the often-cited Centers for Disease Control and Prevention (CDC) statistic stating that one out of every 150 children has some form of autism.⁵ While using the term "spending surge" may be appropriate, investing money in learning about, understanding, and providing appropriate interventions and services for autism may eventually save money in the long run.

* J.D./Psy.D 2010, Widener University School of Law. This note was inspired by the clients and families that I have met through my work as a therapist over the past several years. These relationships and experiences have taught me true compassion. I would like to thank my family and friends for their support during the development of this note.

1. Combating Autism Act of 2006, Pub. L. No. 109-416, 120 Stat. 2821.

2. Expanding the Promise for Individuals with Autism Act of 2007, H.R. 1881, 110th Cong. See also S. 937, 110th Cong. (equivalent Senate Bill).

3. Jennifer Jacobs, *Clinton Details Plan to Confront Autism*, DES MOINES REG., Nov. 25, 2007, at 7B. Current federal spending has been projected at \$100 million per year. *Id.*

4. Alex Wayne, *Spending Surge on Autism Outpaces Understanding*, CQ WEEKLY, Dec. 17, 2007, at 3697. Wayne noted that because it is unknown whether autism is actually on the rise, congressional interest and its subsequent funding is an overreaction to the condition. *Id.*

5. Catherine Rice, Ctrs. for Disease Control & Prevention (CDC), *Prevalence of Autism Spectrum Disorders – Autism and Developmental Disabilities Monitoring Network, 14 Sites, United States, 2002*, MORBIDITY & MORTALITY WKLY. REP. (SURVEILLANCE SUMMARIES), Feb. 9, 2007, at 12, 12. Average prevalence rate was estimated at "6.6 per 1,000 population," or otherwise one in every 150 children. *Id.* at 22. A more recent study reports that the prevalence rate is actually closer to "110 per 10,000 children," which is nearly 1 in every 100 children, a much higher rate than the CDC figure. Michael D. Kogan et al., *Prevalence of Parent-Reported Diagnosis of Autism Spectrum Disorder Among Children in the US, 2007*, 124 PEDIATRICS 1395, 1397 (2009).

For instance, the estimated costs of autism on the healthcare and insurance industries for the year 2013 will be between \$200 billion and \$400 billion.⁶ If a greater understanding of autism is gained by that year or earlier, more beneficial interventions could occur and possibly allow the streamlining of funds into the efficacious therapies and services, thereby lowering the projected costs. Similarly, costs may be cut by appropriately transitioning higher-functioning children into adulthood and enabling them to become productive citizens in society, thus, lessening the financial burden. If all supports and services are abruptly withdrawn or suspended when a child reaches the age of majority, regression in the skills learned may occur. Subsequently, not only would funds be used to support these regressed individuals,⁷ but funds already expended would have been wasted, along with all the energy and effort exerted to help these children develop lifelong skills.

This Note will explain the need for an appropriate transition of individuals with autism from childhood and schooling to adulthood and the real world. This Note will begin with a brief explanation of autism in Section II. Next, Section III will describe transition services that are currently mandated. States' findings and subsequent directives, along with other laws that could facilitate the transition, will then be discussed in Section IV. Section V will present additional suggestions to strengthen the transition into adulthood. Finally, in Section VI, possible problems with the transition services are suggested.

II. WHAT IS AUTISM?

Autism Spectrum Disorders is the general term that encompasses disorders characterized by deficits in social skills, communication delays, and the presence of stereotypical, repetitive behaviors or interests.⁸ Leo Kanner

6. Regis Coccia, Editorial, *Autism Poses Challenge in Risks and Benefits*, BUS. INS., July 9, 2007, at 6. See also Autism: Essential Guide to Finally Understanding Autism!, Autism Statistics, <http://www.autisticchild.org/autism-statistics> (last visited Nov. 17, 2009).

7. One of the worst results would be institutionalizing such individuals if regression is severe enough. According to the Autism Society of Illinois' 2006 legislative agenda, institutionalization could cost up to \$120,000 per year for each individual. Christopher M. Kennedy, Legislative Dir., Autism Soc'y of Ill., *Legislative Update April 2006*, http://www.autismillinois.org/ASI_legislation/2006_legis.html (last visited Jan. 13, 2009).

8. DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 69-71 (4th ed., text rev. 2000) [hereinafter DSM-IV-TR]. Autism Spectrum Disorders are also referred to as Pervasive Developmental Disorders, which is the umbrella term that includes five conditions: Autistic Disorder, Rett's Disorder, Childhood Disintegrative Disorder, Asperger's Disorder, and Pervasive Developmental Disorder Not Otherwise Specified. *Id.* at 69. Autistic Disorder presents with deficits before age three in reciprocal social interaction, communication, and restrictive interests and activities. *Id.* at 71. Rett's Disorder is characterized by decelerated head growth, stereotypical behaviors such as hand-wringing, and motor difficulties. *Id.* at 76. An individual with Childhood Disintegrative Disorder begins to show deterioration around three to four years of age with significant losses in at least two of the following skill areas: language, play, social, bowel/bladder control, or motor. *Id.* at 77-78. Asperger's Syndrome is marked by qualitative impairments in social interaction, motor clumsiness, and restricted focus or behaviors. *Id.* at 80-81. Pervasive Developmental Disorder Not Otherwise Specified is the

provided the first modern description of autism in 1943 by characterizing it as an individual's inability to relate.⁹ Typical behavioral symptoms may include lack of eye contact, scripting or repeating language from television shows or movies, lack of imaginative play, or inflexibility with minor changes in schedule.¹⁰ Because it is a spectrum of disorders, the severity and intensity of the symptoms range across individuals.¹¹ Research has repeatedly demonstrated that children with Autism Spectrum Disorders who receive early services, therapies, and interventions are more likely to have a better outcome.¹² Congress has recognized this need for early intervention and has incorporated the need into its findings and purposes when enacting legislation.¹³ As these children enter adulthood, it is important that neither the gains these individuals have made through early intervention nor the ongoing services are lost in the transition.

III. INDIVIDUALS WITH DISABILITIES EDUCATION ACT

The Individuals with Disabilities Education Act¹⁴ (IDEA) provides that, by the age of sixteen, a student's "individualized education program"¹⁵ (IEP)

default diagnosis where the child does not fit the criteria for any of the other diagnoses, but displays some impairment in reciprocal social interaction, language, or range of activities and interests. *Id.* at 84.

With the fifth edition of the Diagnostic Statistical Manual of Mental Disorders due in 2012, it has been suggested that Asperger's Syndrome and Pervasive Developmental Disorder Not Otherwise Specified will be subsumed under a new category, Autism Spectrum Disorders. Claudia Wallis, *A Powerful Identity, a Vanishing Diagnosis*, N.Y. TIMES, Nov. 3, 2009, at D1. This new single category is intended to encompass the entire range of autism disorders. *Id.*

9. Leo Kanner, *Autistic Disturbances of Affective Contact*, 2 NERVOUS CHILD 217, 242 (1943).

10. DSM-IV-TR, *supra* note 8, at 70-71.

11. See Martin A. Volker & Christopher Lopata, *Autism: A Review of Biological Bases, Assessment, and Intervention*, 23 SCH. PSYCHOL. Q. 258, 258, 262 (2008). See also V. Nordin & C. Gillberg, *The Long-Term Course of Autistic Disorders: Update on Follow-Up Studies*, 97 ACTA PSYCHIATRICA SCANDINAVICA 99, 99-100 (1998) (calling autism a "heterogeneous syndrome").

12. See, e.g., Esther Ben-Itzhak & Ditzza A. Zachor, *The Effects of Intellectual Functioning and Autism Severity on Outcome of Early Behavioral Intervention for Children with Autism*, 28 RES. DEVELOPMENTAL DISABILITIES 287, 297, 299 (1997); Howard Cohen et al., *Early Intensive Behavioral Treatment: Replication of the UCLA Model in a Community Setting*, 27 J. DEVELOPMENTAL & BEHAV. PEDIATRICS (SUPP. ISSUE) S145, S146 (2006); Bob Remington et al., *Early Intensive Behavioral Intervention: Outcomes for Children with Autism and Their Parents After Two Years*, 112 AM. J. ON MENTAL RETARDATION 418, 418 (2007).

13. For example, findings of the Expanding the Promise for Individuals with Autism Act indicate a "strong consensus within the research community that intensive intervention started as soon as possible following diagnosis yields the most positive outcomes for children with autism." H.R. 1881, 110th Cong. § 2(7) (2007).

14. Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1482 (2000).

15. § 1414(d)(1)(A)(i)(VIII). An IEP is plan that is tailored to the individual child's educational needs so that the child has the ability to learn more effectively. § 1414(d)(1)(A)(i)(II). Provisions within an IEP can range from providing extra time on a test to offering specific special education services. § 1414(d)(1)(A)(i)(VI).

must include an appropriate segment regarding transition into adulthood.¹⁶ Components of this transition must include a results-oriented process¹⁷ and a consideration of the student's wishes, strengths, and needs.¹⁸ Moreover, the transition must offer "instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and . . . acquisition of daily living skills and functional vocational evaluation" if appropriate.¹⁹

The transition process should begin under IDEA because it mandates that students be provided with a "free appropriate public education" that "prepare[s] them for further education, employment, and independent living."²⁰ Thus, IDEA can provide the funding for the transition at the beginning of the process and, hopefully, ensure that the necessary services for the transition are presented under this "free appropriate public education." Overall, the description of transition services is broad and, as such, some of states have created autism task forces that pinpoint particular areas in the transition process that need to be developed to better serve individuals with autism.

IV. STATES' AUTISM TASK FORCES

Traditionally, states have emphasized the developmental course of autism and its interventions while tending to de-emphasize the importance of transitioning these children with autism into adulthood.²¹ A recent trend demonstrates that states are developing subcommittees within the autism task forces that concentrate solely on this area of transitioning.²² These states break

16. § 1414(d)(1)(A)(i). The statute indicates that "beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter."

17. § 1401(34)(A). Results oriented process is defined as "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 (including supported employment), continuing and adult education, adult services, independent living, or community participation." *Id.*

18. § 1401(34)(B).

19. § 1401(34)(C).

20. § 1400(d)(1)(A).

21. *See, e.g.*, 2007 Miss. Laws 990, 992 (Miss. House Bill 1267). Responsibilities of the task force include, but are not limited to: reviewing early intervention programs and assessing availability of early screening, diagnosis, and treatment. *Id.* However, there is no specific language of assessing or reviewing services that would aid in the transition to adulthood. *Id.* The house bill, however, does mention "vocational efforts," "additional services," and "continuum of educational . . . services," which could be interpreted as addressing the transition. *Id.* Yet, it would be more effective to explicitly articulate the need for such transition services.

The recently introduced Expanding the Promise for Individuals with Autism Act of 2007 specifically adopts more of a lifespan approach to individuals with autism. H.R. 1881, 110th Cong. § 3 (2007). Such an approach appears to have influenced states' task forces to also consider the lifespan of the individual.

22. For example, the Pennsylvania Autism Task Force provides an adulthood subcommittee. PENNSYLVANIA AUTISM TASK FORCE, PA. DEP'T OF PUB. WELFARE, AUTISM TASK FORCE FINAL REPORT: TRANSITION TO ADULTHOOD SUBCOMMITTEE REPORT (2004),

down the transition process into various components, which include, but are not restricted to: 1) self-determination and person-centered emphasis in the transition;²³ 2) Medicaid waivers for adults with autism;²⁴ 3) encouraging individuals to serve this population;²⁵ 4) providing accommodations at state universities;²⁶ 5) employment opportunities; and 6) housing options.²⁷ Some of these suggestions can be incorporated into the provisions of the IDEA or other current acts, such as the Americans with Disabilities Act of 1990²⁸ (hereinafter “ADA”). Additionally, legislation can be passed in order to create a more efficacious process so that the hard work and services that were devoted to the child with autism are not negated.

A. Self-Determination and Person-Centered Emphasis

The role the individual with autism plays during his or her own transition into adulthood may result in a more beneficial outcome. For example, self-determination, which has been described as taking charge of one’s own life and making one’s own decisions with minimal influence from outside sources,²⁹ can lead to a smoother transition and lessen the impact of the

available at <http://www.dpw.state.pa.us/ServicesPrograms/Autism/TaskForce/003670890.htm> [hereinafter PA. AUTISM TASK FORCE]. Similarly, New Jersey has developed a subcommittee devoted to adult issues. NEW JERSEY ADULTS WITH AUTISM TASK FORCE, N.J. DEP’T OF HUMAN SERVS., ADDRESSING THE NEEDS OF ADULTS WITH AUTISM SPECTRUM DISORDER: RECOMMENDATIONS FOR A PLAN OF ACTION FOR THE STATE OF NEW JERSEY 4 (2009), *available at* <http://www.state.nj.us/humanservices/ddd/boards/AATFrpt.pdf> [hereinafter N.J. AUTISM TASK FORCE]. Additionally, the Caring for Washington Individuals with Autism Task Force has provided a focus on education and employment after high school. CARING FOR WASHINGTON INDIVIDUALS WITH AUTISM TASK FORCE, WASH. DEP’T OF HEALTH, REPORT TO THE GOVERNOR AND THE LEGISLATURE 24-26 (2006), *available at* <http://www.doh.wa.gov/cfh/mch/Autism/documents/ExecSumm1-11-07.pdf> [hereinafter WASH. AUTISM TASK FORCE].

23. *See, e.g.*, NEVADA AUTISM TASK FORCE, NEV. DEP’T OF HEALTH & HUMAN SERVS., 2008 REPORT OF THE NEVADA AUTISM TASK FORCE: AN ACTION PLAN FOR NEVADA’S LEGISLATORS AND POLICYMAKERS 107 (2008), *available at* http://dhhs.nv.gov/autism/TaskForce/2008/2008_NV_Autism_Task_Force_Report.pdf [hereinafter NEV. AUTISM TASK FORCE].

24. *See, e.g.*, OHIO AUTISM TASK FORCE 9 (2004), *available at* http://www.asgc.org/Ohio_Autism_Taskforce.pdf [hereinafter OHIO AUTISM TASK FORCE]; PA. AUTISM TASK FORCE, *supra* note 22.

25. *See, e.g.*, Ohio Autism Task Force, *supra* note 24, at 6; PA. AUTISM TASK FORCE, *supra* note 22; WASH. AUTISM TASK FORCE, *supra* note 22, at 34.

26. *See, e.g.*, NEV. AUTISM TASK FORCE, *supra* note 23, at 111.

27. *See, e.g.*, N.J. AUTISM TASK FORCE, *supra* note 22, at 31-34.

28. Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213 (2006). Title I of the ADA prohibits discrimination against an otherwise “qualified individual with a disability because of the disability” in the hiring procedures and employment practices. § 12112(a).

29. Michael L. Wehmeyer, *Self-Determination as an Educational Outcome: Why is it Important to Children, Youth, and Adults with Disabilities?*, in SELF-DETERMINATION ACROSS THE LIFE SPAN: INDEPENDENCE AND CHOICE FOR PEOPLE WITH DISABILITIES 17, 24 (Deanna J. Sands & Michael L. Wehmeyer eds., 1996).

removal of childhood services.³⁰ Four essential characteristics of self-determination include 1) autonomy, 2) self-regulation, 3) psychological empowerment in the initiation and response to an event, and 4) self-realization.³¹ Self-determination should be the driving force behind the student's IEP.³² Through self-determination, students are able to make their own decisions and set their own goals on their IEP, which enables them to voice their needs and wants and adjust their decisions and goals accordingly.³³ As a result, students are able to learn more about themselves and use that knowledge as a foundation for their adult lives.³⁴

While IDEA does not specifically mention "self-determination" in transition, various task forces have encouraged the use of self-determination while planning the transition between high school and adulthood.³⁵ This recognition of self-determination will help better address the needs of the individuals with autism. Without it, members of the transition team would merely dictate what they believe is best for the student and neglect what the student wants. Ignoring the student's desires may lead to negative behaviors and diminish the effectiveness of the transition into adulthood. Alternately, with self-determination, the students not only set the goals of their IEP, but they also determine what steps are required to accomplish these goals; this will build their self-esteem and their skills to act more independently. Moreover, because students have a voice in the process, they will likely be happier because their wants and feelings are being validated. As a result, they may have the groundwork to lead a more successful adulthood than those students who are told what to do regardless of their needs.³⁶

30. See Michael L. Wehmeyer et al., *Self-Determination, Student Involvement, and Leadership Development*, in LIFE BEYOND THE CLASSROOM: TRANSITION STRATEGIES FOR YOUNG PEOPLE WITH DISABILITIES 41, 45-46 (Paul Wehman ed., 4th ed. 2006). See also Mari Watanabe & Peter Sturmey, *The Effect of Choice-Making Opportunities During Activity Schedules on Task Engagement of Adults with Autism*, 33 J. AUTISM & DEVELOPMENTAL DISORDERS 535, 538 (2003) (demonstrating that choices lead to increased on-task behaviors, as well as an increase in productivity and a decrease in inappropriate behaviors).

31. Wehmeyer et al., *supra* note 30, at 43. Additionally, the self-determination model stresses the importance of being a causal agent in one's own life. *Id.* As a causal agent, one does not have to actually do everything on one's own, but rather just affect the outcome. *Id.*

32. Paul Wehman, *Individualized Transition Planning: Putting Self-Determination into Action*, in LIFE BEYOND THE CLASSROOM: TRANSITION STRATEGIES FOR YOUNG PEOPLE WITH DISABILITIES, *supra* note 30, at 71, 72.

33. *Id.*

34. *Id.*

35. See, e.g., PA. AUTISM TASK FORCE, *supra* note 22. See also WASH. AUTISM TASK FORCE, *supra* note 22, at 14 (explaining the need for residential options during the transition into adulthood).

36. See Mary F. Held et al., *"The John Jones Show": How One Teacher Facilitated Self-Determined Transition Planning for a Young Man with Autism*, 19 FOCUS ON AUTISM & OTHER DEVELOPMENTAL DISABILITIES 177 (2004). While transitioning a student from high school into adult life, a teacher incorporated self-determination into the process in order to effectuate a smoother transition. *Id.* at 181. The teacher recognized the student's interest in music, desire to work for a radio station, and to become a rock star. *Id.* at 180. By acknowledging the student's wishes, the student was able to volunteer at a local radio station and was able to take drum

IDEA should be amended to include self-determination as part of the definition of transition services. While the statute does consider the “child’s needs . . . strengths, preferences, and interests,”³⁷ self-determination requires more than acknowledging these areas. The statute should also include language that emphasizes the importance of allowing the student to take a lead role in the transition IEP, and not merely allow the transition team to determine what the student needs to accomplish in order to complete the transition into adulthood.

B. Medicaid Waiver for Adults with Autism

Individuals with autism thrive on consistency.³⁸ Individuals who are provided with services at a relatively early age³⁹ may receive greater benefit if those services continue into adolescence and eventually into adult life. Any disruption in the services may cause deterioration in positive behaviors and an increase in negative behaviors.⁴⁰ Unfortunately, the services that individuals with autism had as children may not continue into adulthood simply because the services are no longer covered or funded by a particular act once the individual reaches the age of majority.⁴¹ To receive certain adult services, individuals with autism may have to look to Medicaid waivers, which are state-federal contracts that offer home and community-based services, as opposed to institutionalization, provided that the individual meets certain criteria.⁴² Such waivers are not an entitlement. The individual will not automatically receive a waiver unless the eligibility requirements have been fulfilled.⁴³

lessons and voice lessons in pursuit of his dream to become a rock star. *Id.* at 180, 182. As a result, the student was seen as more competent and able, services could be more tailored to his needs, and the student himself was able to become more independent as an adult. *Id.* at 183-84.

37. 20 U.S.C. § 1401(34)(B) (2006).

38. Virginia Reece, *Raising a Child with Autism: The Basics*, <http://www.swedish.org/18923.cfm> (last visited Feb. 18, 2010). Individuals with autism show resistance to or distress over even small changes in their environment. DSM-IV-TR, *supra* note 8, at 71. Therefore consistency in their routine and environment is important to encourage positive behaviors and achieve a successful transition.

39. Early intervention services can begin at birth. For example, the Pennsylvania Early Intervention Program is provided to families with children from birth to age five. Bureau of Early Intervention Servs., Pa. Dep’t of Pub. Welfare, Early Intervention Services, *available at* http://www.dpw.state.pa.us/Resources/Documents/Pdf/Publications/EI_Introduction_for_Website.pdf (last visited Nov. 22, 2009).

40. Reece, *supra* note 38.

41. For example, services provided under IDEA expire once the individual graduates high school or reaches the age of twenty-two. 20 U.S.C. § 1412(a)(1)(A) (2006).

42. 42 U.S.C. § 1396n(c) (2006).

43. *Id.* To be eligible, the individual must be financially eligible, demonstrate that institutional level of care is necessary, recognize that the waiver program is an alternative to the institutionalization, and demonstrate that the cost of the waiver is cost-neutral, or does not exceed the cost of institutionalization. § 1396n(c)(2)(B)-(C).

The waiver program is currently operated under the Mental Health/Mental Retardation (MH/MR) system.⁴⁴ Unfortunately, this categorization results in services that are tailored towards individuals with mental illnesses or mental retardation, and few of the services are specifically tailored to persons with autism. For example, in 1999, the Surgeon General declared that the most efficient treatment for youths with autism was behavioral intervention, which is not generally offered under the MH/MR system.⁴⁵ Thus, under the current system, the specialized needs of the individual with autism may not be met.

Subsequently, as the young adult transitions into the new developmental stage of his or her life, it is important that the individual is aware of such waivers so that particular services are not interrupted. Moreover, individuals can apply early so that if there is a waiting period or a waiting list, the disruption in services is not as profound. More importantly, however, states and the federal government must create waivers that are specific to autism.⁴⁶ By making waivers autism specific, individuals who may not have qualified under the MH/MR waivers may have the opportunity to benefit from the waiver program. Additionally, appropriate services would be rendered so that the individual could actually maintain his or her level of functioning and skills and waiver funds would not be voided.

C. Encouraging Individuals to Serve the Adults with Autism Population

Consistency in services may also be negatively influenced by a lack of well-trained professionals once the child or adolescent reaches adulthood.⁴⁷ Stated otherwise, even if the individual is able to maintain funds to pay for services, professionals may not be available to the individual with autism. Consequently, the individual's services could be disrupted.

The Pennsylvania, Washington, and Ohio Autism Task Forces have recognized the importance of continuing the high quality of support services into adulthood.⁴⁸ As an incentive, all three states have suggested a student loan

44. See NEV. AUTISM TASK FORCE, *supra* note 23, at 65 (finding that “[t]he administration of Autism Medicaid Waivers sometimes fits better outside the Mental Health or Developmental Disabilities service system”).

45. *Id.* at 65, 86.

46. *Id.* at 65. An autism focus will also enable Medicaid-eligible adults to live independently with an enhanced quality of life, and avoid institutionalization. *Id.* at 23-24. See also PA. AUTISM TASK FORCE, *supra* note 22 (taking into consideration the creation of a separate status from the MH/MR designation). Pennsylvania has created a federal waiver program that is geared specifically to adults with autism. See Bureau of Autism Servs., Pa. Dep't of Pub. Welfare, Adult Autism Waiver, <http://www.dpw.state.pa.us/ServicesPrograms/Autism/003677257.htm> (last visited Nov. 23, 2009).

47. *E.g.*, OHIO AUTISM TASK FORCE, *supra* note 24, at 6; PA. AUTISM TASK FORCE, *supra* note 22; WASH. AUTISM TASK FORCE, *supra* note 22, at 34.

48. PA. AUTISM TASK FORCE, *supra* note 22. The subcommittee noted the lack of providers, practitioners, and support staff for adults who are on the spectrum. *Id.* The Washington Autism Task Force recognized the inadequate number of qualified individuals who are available to work with children and adults with autism. WASH. AUTISM TASK FORCE, *supra*

forgiveness program in order to attract a wide variety of individuals.⁴⁹ Under such programs, people may be encouraged to learn more about Autism Spectrum Disorders, or may use their higher-education degrees to benefit those on the spectrum.

As Pennsylvania, Washington, and Ohio have recognized, it is important that student loan forgiveness programs exist at the state level. If such general student loan programs are already in place within a state, it is essential that these programs be amended to include the individuals who choose to serve the autism community. The federal government has addressed this need by introducing a bill that allows for part or all of a student's loans to be canceled.⁵⁰ Inevitably, as these loan cancellation programs expand, the interest in serving the population of individuals with autism may also grow. Additionally, Congress may consider amending the Federal loan forgiveness programs in order to account for these individuals' loans. By increasing the number of individuals who serve this population, the possibility of service disruption will be reduced, and this will allow the individual to transition into adulthood with fewer problems.

D. Providing Accommodations at State Universities

Many individuals with higher-functioning autism are capable of furthering their knowledge through higher education.⁵¹ However, certain behaviors may prevent them from being accepted or going to colleges or universities merely because such institutions are not familiar with or aware of the unique educational needs of students with autism.⁵² For instance, while individuals with autism may have the requisite skills and knowledge to succeed academically, they are unlikely to have the social skills necessary to thrive in a setting where they interact with peers, professors, or the institution's administrators.⁵³ Thus, the state should require that state universities are adequately prepared to integrate individuals with autism in their student body.

note 22, at 34. The Ohio Autism Task Force acknowledged the importance of drawing the attention of more professionals to serve individuals with autism. OHIO AUTISM TASK FORCE, *supra* note 24, at 6.

49. OHIO AUTISM TASK FORCE, *supra* note 24, at 6; PA. AUTISM TASK FORCE, *supra* note 22; WASH. AUTISM TASK FORCE, *supra* note 22, at 34.

50. See Teacher Education for Autistic Children Act of 2005, H.R. 4059, 109th Cong. § 5(a) (expanding loan forgiveness programs for teachers of students with autism by assuming the remaining loans after three years of consecutive service).

51. Consider, for example, Temple Grandin, who was diagnosed with autism as an infant and later earned a graduate degree and has since become an associate professor at Colorado State University. Temple Grandin, *A Personal Perspective of Autism*, in 2 HANDBOOK OF AUTISM AND PERVASIVE DEVELOPMENTAL DISORDERS: ASSESSMENT, INTERVENTIONS, AND POLICY 1276, 1276 (Fred R. Volkmar et al. eds., 3d ed. 2005).

52. Ernst VanBergeijk et al., *Supporting More Able Students on the Autism Spectrum: College and Beyond*, 38 J. AUTISM & DEVELOPMENTAL DISORDERS 1359, 1363, 1365 (2008).

53. *Id.* at 1365.

The Washington Autism Task Force has provided in its recommendation, various methods to accommodate individuals on the spectrum at Washington State University.⁵⁴ The Task Force suggests that the staff within the Office of Disabilities at the state schools be trained in order to appropriately meet the needs of these individuals.⁵⁵ In particular, the staff will be able to provide for these individuals with autism by addressing their career development, their self-disclosure of autism, and the necessary accommodations and modifications within classrooms and dormitories.⁵⁶

Encouraging states to provide accommodations at their schools can only increase the opportunities for success amongst individuals with autism. While the State has less control over private schools and universities, these institutions must still comply with the mandates of the ADA. Private institutions fall under the ADA's Title III as public accommodations.⁵⁷ As a public accommodation the institutions are required by law to provide reasonable accommodations.⁵⁸ Such reasonable accommodations include both providing the necessary training to members of the institution as well as other accommodations within the classroom setting and the dormitories.⁵⁹ By doing this, both public and private universities and colleges will be able to provide the requisite higher education for individuals on the autism spectrum.

E. Employment Opportunities

Becoming employed is an integral step to achieving autonomy once an individual reaches adulthood and strives to live independently. Having autism, or any other disability, should not prevent the individual from gaining employment. Unfortunately, employment does not always come easily to those with disabilities. Approximately, 75% of individuals with disabilities are unemployed, and 79% of those individuals wish to be employed.⁶⁰ Nevertheless, multiple provisions and acts permit these individuals to engage in employment opportunities.

54. WASH. AUTISM TASK FORCE, *supra* note 22, at 54.

55. *Id.*

56. *Id.*

57. 42 U.S.C. § 12181(7)(f) (2006). Private universities or colleges would qualify under "other place of education." *Id.*

58. § 12182(b)(2)(A)(ii).

59. § 12182(b)(2)(a)(ii),(iv). *See* VanBergeijk et al., *supra* note 52, at 1364.

60. Peter F. Gerhardt & David L. Holmes, *Employment: Options and Issues for Adolescents and Adults with Autism Spectrum Disorders*, in 2 HANDBOOK OF AUTISM AND PERVERSIVE DEVELOPMENTAL DISORDERS: ASSESSMENT, INTERVENTIONS, AND POLICY, *supra* note 51, at 1087, 1088. While this percentage pertains to all individuals with disabilities, persons with autism were included in the poll. *Id.* An exact number of employed individuals with autism has yet to be published.

1. Workforce Investment Act of 1998

Under the Workforce Investment Act of 1998, a Vocational Rehabilitation Program (hereinafter “VR Program”) provides employment services for individuals with disabilities.⁶¹ The VR Program allows for a steadier transition into employment. The VR Program has no age requirement and can begin while the individual is still attending school. By working with local schools to serve youth with disabilities such as autism, the VR Program provides employment training and other transition services before they graduate and enter the workforce.⁶² Through the VR program, an individual is able to specify an employment goal and tailor services to meet that particular goal.⁶³ By mapping out steps to reach his or her employment goal, the individual is enabled to take control of his or her own life to become more independent and responsible.⁶⁴

The Workforce Investment Act has also been commended for creating a “One Stop Career Center System.”⁶⁵ Due to the implementation of One Stop Career Centers, an individual can take advantage of “universality, customer choice, integration of services, and accountability for results.”⁶⁶ Thus, an individual can receive a multitude of services and aid at one center without having to engage in multiple relationships with various providers.⁶⁷

2. Title I of the Americans with Disabilities Act of 1990

While the Workforce Investment Act enables the individual to gain employment through development of useful skills, the ADA prevents the individual from being discriminated against through hiring and employment practices.⁶⁸ Under the ADA, employers are required to provide reasonable accommodations⁶⁹ that would not result in an undue hardship⁷⁰ on the

61. Workforce Investment Act of 1998, Pub. L. No. 105-220, § 404, 112 Stat. 936 (codified as amended at 29 U.S.C. § 720 (2006)).

62. Paul Wehman, *Transition: The Bridge from Youth to Adulthood*, in LIFE BEYOND THE CLASSROOM: TRANSITION STRATEGIES FOR YOUNG PEOPLE WITH DISABILITIES, *supra* note 30, at 13.

63. 29 U.S.C. § 720(a)(3)(C) (2006). Those who participate in the program must be “active and full partners in the vocational rehabilitation process.” *Id.*

64. Individuals are encouraged to choose their own “outcome[], entities providing . . . services, and the methods used to secure such services.” § 720(a)(3)(C)(ii).

65. Wehman, *supra* note 62, at 3, 18.

66. *Id.* (explaining that universality entails that services are available to all, customer choice enables the individuals to make their own decisions, integration of services merges career and vocational services, and accountability for results requires the services providers to meet certain performance standards). *See also* § 720(3).

67. Beth Bader Gilson, *One-Stop Career Centers: Will They be Used by People with Disabilities?*, 15 FOCUS ON AUTISM & OTHER DEVELOPMENTAL DISABILITIES 30, 30 (2000).

68. Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12112 (2006).

69. Reasonable accommodations include “making existing facilities . . . readily accessible . . . and usable.” § 12111(9)(A). It also entails: “[J]ob restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of

employer.⁷¹ Given a reasonable accommodation, the individual can successfully complete his or her job function. In the case of an individual with autism, providing a predictable, consistent schedule will allow the individual to thrive in the setting and may be enough to qualify as a reasonable accommodation.⁷²

Recently, there has been a push to “restore the intent and protections of the Americans with Disabilities Act of 1990.”⁷³ The thrust of the bill is to redefine disability in broader terms.⁷⁴ With a broader scope, the ADA can ensure that more individuals are protected.⁷⁵ Moreover, a broadened ADA may have implications for individuals with autism who are higher functioning and whose symptoms are less severe. Such individuals will then be guaranteed the protections of the ADA when entering employment.

3. Ticket to Work and Work Incentives Improvement Act of 1999

Once an individual with autism is able to obtain regular employment, the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA) may be enforced.⁷⁶ Findings of the TWWIIA identify a catch-22, where individuals with disabilities may lose their Medicare or Medicaid benefits that cover their medical costs if they decide to become employed.⁷⁷ Individuals could therefore neglect to “maximiz[e] their employment, earning potential, and independence”⁷⁸ because they fear that they will be unable to pay for their medical expenses. To overcome this barrier to employment, the TWWIIA presents two options to maintain coverage: 1) individuals who qualify can buy into Medicaid coverage if necessary; or 2) individuals may elect to maintain Medicare coverage even while employed.⁷⁹ In order to buy into Medicaid coverage, the individual’s income must exceed the official income poverty line by 250%.⁸⁰ Additionally, the TWWIIA encourages individuals to find employment by providing the opportunity to “seek the services necessary to

equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations . . .” § 12111(9)(B).

70. § 12111(10)(A) (explaining that an undue hardship would cause “significant difficulty or expense” for the employer).

71. § 12112(b)(5).

72. See sources cited and accompanying text *supra* note 38.

73. ADA Restoration Act of 2007, H.R. 3195, 110th Cong.

74. *Id.* §§ 2(b)(1)-(3).

75. *Id.*

76. See Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. No. 106-170, 113 Stat. 1860.

77. § 2(a)(6).

78. § 2(a)(5).

79. §§ 2(b)(2)-(3).

80. § 201(g)(1)(B). After income reaches this threshold, the premiums paid to buy into the Medicaid provisions are based on a sliding scale determined by the state. § 201(g)(1)(A).

obtain and retain employment.”⁸¹ Consequently, this Act not only encourages individuals with disabilities to seek employment, but it also encourages them to seek their maximum potential at their employment setting.

The TWWIA eases the burden of transitioning into adulthood and employment by ensuring the continuation of coverage for health care services. This assistance is extremely important for individuals with autism who may not otherwise be able to pay for medical services.⁸² Vocational rehabilitation services can also be covered under this Act under the guise of services required to obtain employment. Under the Act, individuals would no longer have to weigh medical coverage against earning a steady income.⁸³

In practice, the TWWIA has not been as successful as intended. The program has not been fully utilized by the individuals with disabilities population, which is likely due to the population’s lack of knowledge or understanding of the program. While the program’s intention is to preserve Medicaid or Medicare benefits, the fear of losing such benefits is significant, and this may prevent individuals from taking advantage of the program.⁸⁴ Nevertheless, if better implementation can be achieved, which should include an educational component of the program, the premise of the federal Act remains worthwhile, as it seeks to encourage individuals with disabilities to return to gainful employment.⁸⁵ States may want to develop their own programs that implement or parallel the goals and purposes of the TWWIA, so that the programs may be more accessible to the population.⁸⁶ Not only will the states be aiding individuals with autism to obtain employment, they will also be acquiring citizens who contribute to society.

4. Employer Tax Incentives

While employers are prevented from discriminating against individuals with disabilities during the hiring process, employers may be more likely to hire such individuals with some encouragement from the government. The Ohio and Washington Autism Task Forces have recognized the advantages that may emerge out of employer tax incentive schemes.⁸⁷ Under such schemes,

81. § 2(b)(4) (this Act is often referred to as the “Return to Work Ticket Program”).

82. § 2(a)(3).

83. §§ 2(a)(5), (b)(3).

84. Brigida Hernandez et al., *Perspectives of People with Disabilities on Employment, Vocational Rehabilitation, and the Ticket to Work Program*, 27 J. VOCATIONAL REHAB. 191, 192, 195 (2007). For an article evaluating the impact of the TWWIA, see Craig Thornton & Paul O’Leary, *Slow Change in the Employment Services Market: The Early Years of Ticket to Work*, 27 J. VOCATIONAL REHAB. 73 (2007) (arguing that it may be too early to truly measure the effectiveness of the program).

85. See generally Paul Wehman & W. Grant Revell, *The Ticket to Work Program: Marketing Strategies and Techniques to Enhance Implementation*, 24 J. VOCATIONAL REHAB. 45 (2006).

86. The Ohio Autism Task Force has contemplated enacting “Medicaid-buy in legislation,” in which the individual would pay a premium in order to continue the services and supports covered by Medicaid. OHIO AUTISM TASK FORCE, *supra* note 24, at 7-8.

87. *Id.* at 7; WASH. AUTISM TASK FORCE, *supra* note 22, at 34.

employers are encouraged to provide more employment opportunities for individuals with autism in exchange for some form of tax benefit. The Washington Autism Task Force observed the positive correlation between tax incentives for employers and the increase in meaningful employment opportunities for individuals with autism.⁸⁸ Furthermore, according to the Ohio Autism Task Force, tax incentives will encourage employers to become proactive in implementing reasonable accommodations for individuals with autism and thereby “increase the number of employment opportunities.”⁸⁹ Other states should follow the example that Washington and Ohio have set. If this occurs, individuals with autism who are fully qualified to enter the workforce will have better job opportunities and may even have a choice between businesses.

5. Job Carving

To maximize the benefits of the switch from schooling to employment, the transition process may aim to incorporate job carving. Job carving is a form of customized employment, which focuses “on the individual’s needs, skills, talents, and potential contributions to the workplace first, then finding or creating employment . . . that best represents the ideal conditions of employment for that unique job seeker.”⁹⁰ Job carving consists of a series of steps that result in an individualized relationship between employer and employee.⁹¹ Through the process, both the needs of the employee and the employer are fulfilled.⁹²

Customized employment meets the requisites of IDEA’s transition planning by considering the student’s wishes, strengths, and needs, and by developing employment objectives.⁹³ Accordingly, while IDEA does not specifically mention job carving or customized employment, the objectives of IDEA and customized employment are similar, and could potentially be incorporated into or funded under IDEA. When transitioning individuals into the workforce, job carving should be considered because of the specificity

88. WASH. AUTISM TASK FORCE, *supra* note 22, at 34.

89. OHIO AUTISM TASK FORCE, *supra* note 24, at 7.

90. Cary Griffin & Pam Sherron Targett, *Job Carving and Customized Employment*, in LIFE BEYOND THE CLASSROOM: TRANSITION STRATEGIES FOR YOUNG PEOPLE WITH DISABILITIES, *supra* note 30, at 289, 290.

91. *Id.* at 294-97. Suggested steps include: “determin[ing] the job seeker’s needs and desires;” “research[ing] target businesses that match the job seeker’s profile;” “visit[ing] potential employers;” “observ[ing] the corporate culture;” “analyz[ing] the job duties and determining the job seeker’s capabilities;” “negotiat[ing] between the job seeker and the employer;” “teach[ing] and refin[ing] work tasks;” “build[ing] on typical supports and relationships;” fading the employment specialist out of the work environment; and “maintain[ing] a consultative role” by the service agency. *Id.*

92. *Id.* at 290.

93. 20 U.S.C. §§ 1401(34)(B)-(C) (2006).

with which employment can be tailored to each individual with autism, particularly because such individuals have varying levels of impairment.⁹⁴

F. Housing Options

With young adulthood comes the opportunity to gain more autonomy by living independently from one's family. The Pennsylvania and Washington Autism Task Forces have acknowledged the need to increase housing options and to familiarize individuals with autism and their families with the various housing programs.⁹⁵ The ability to live independently depends on the acquisition of particular daily life skills.⁹⁶ Not all individuals with autism will be able to live independently. However, those individuals who exhibit the requisite skills are able to take advantage of the following federal and state housing programs.

1. The Quality Housing and Work Responsibility Act of 1998

Individuals with disabilities may obtain Housing Choice Vouchers through the Quality Housing and Work Responsibility Act of 1998.⁹⁷ In particular, mainstream vouchers are targeted for persons with disabilities and provide long-term rent subsidies.⁹⁸ Housing Choice Vouchers have been recognized for their portability.⁹⁹ Portability allows the individual to choose where he or she lives rather than being bound to a specific area.¹⁰⁰ Unfortunately, individuals who obtain these vouchers may be placed on long waiting lists before finally moving into new homes.¹⁰¹ For purposes of transition, applying early for the vouchers may thwart the impact of long waiting lists. By acting early, the delay in housing may be diminished once the individual is ready to live independently.

2. Low Income Housing Tax Credit

Developers who build or provide low-income housing are eligible for federal tax credits under the Low Income Housing Tax Credits Act.¹⁰² These

94. Griffin & Targett, *supra* note 90, at 293-97.

95. PA. AUTISM TASK FORCE, *supra* note 22; WASH. TASK FORCE, *supra* note 22, at 14.

96. Skills can range from appropriate hygiene to paying bills in a timely manner.

97. Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, 112 Stat. 2461; Section 8 Tenant Based Assistance: Housing Choice Voucher Program, 24 C.F.R. § 982.1 (2000).

98. § 506, 112 Stat. at 2479; Michael D. West & William E. Fuller, *Housing and Community Living*, in LIFE BEYOND THE CLASSROOM: TRANSITION STRATEGIES FOR YOUNG PEOPLE WITH DISABILITIES, *supra* note 30, at 369, 378.

99. West & Fuller, *supra* note 98, at 378.

100. *Id.* Vouchers contrast the certificate programs that dictate the areas where people were allowed to live. *Id.*

101. *Id.*

102. 26 I.R.C. § 42(d)(6) (West 2002).

credits provide a financial incentive for developers to create affordable housing for low-income families. Rental costs for these units cannot exceed thirty percent of the individual's income.¹⁰³ By making housing affordable, individuals with autism will reap the benefits provided by low-income housing such as the ability to live independently.

3. Cranston-Gonzalez National Affordable Housing Act

The purpose of the Cranston-Gonzalez National Affordable Housing Act is to provide accommodations and supportive services in housing for the special needs of persons with disabilities.¹⁰⁴ Private, non-profit organizations can receive financial assistance to develop more supportive housing.¹⁰⁵ Additionally, the Act provides help with rental payments for individuals who occupy the units.¹⁰⁶ Young adults with autism can qualify under this Act, which not only creates the opportunity for organizations to create more housing units, but also provides financial assistance to the individuals living in them.

V. OTHER AREAS OF FOCUS

The areas that have been contemplated by federal or state governments have not been exhausted. Other areas that could be taken into consideration include: 1) the opportunity to provide financial security for individuals with autism; and 2) educating the general public about Autism Spectrum Disorders.¹⁰⁷

A. Financial Security for Individuals with Autism

While one of the main goals of transitioning into adulthood is employment, individuals with autism may not have the desirable financial security if such employment pays minimum wage. Their expenses may exceed their income,¹⁰⁸ or emergencies may arise that drain their funds. Congress recognized this need by introducing the Financial Security Accounts for Individuals with Disabilities

103. § 42(g)(2)(A).

104. 42 U.S.C.A. § 8013(a) (West 2005).

105. § 8013(b)(2). Capital advances for these projects "shall bear no interest and its repayment shall not be required so long as the housing remains available for very-low-income persons with disabilities . . ." § 8013(d)(1).

106. § 8013(d)(3).

107. By raising awareness of Autism Spectrum Disorders, the community will be able to better help the individual with autism and respond appropriately to the situation. For instance, by educating law enforcement about autism, the individual will not get lost or mistreated in the criminal justice system because of misunderstood or misinterpreted behaviors. PATRICIA HOWLIN, AUTISM AND ASPERGER SYNDROME: PREPARING FOR ADULTHOOD 300-12 (2d ed. 2004).

108. Expenses may include typical household bills and medication for seizure disorders (seizure disorders tend to be co-morbid with autism spectrum disorders).

Act of 2007.¹⁰⁹ The Act sought to amend the Internal Revenue Code by including “the establishment of financial security accounts for the care of family members with disabilities.”¹¹⁰ This amendment would have allowed such a financial security account to be exempt from taxation.¹¹¹ Accounts that were considered eligible under this proposal included trusts set up exclusively to pay for qualified disability expenses.¹¹²

While it was never passed, this bill was nonetheless a step toward providing financial security for individuals with autism. It sought to cover certain costs, particularly those that pertain to requisite services that the individual may not have been able to afford if such an account had not been set up. With the help of the Act, individuals would have only been responsible for costs relating to self-care or leisure activities. Accordingly, individuals would have been less likely to have financial difficulties. Moreover, another potential derivative benefit of the tax exemption would have been that, if needed, the entirety of the fund would have directly paid for services. This increased availability of funds would have helped to avoid a disruption in services for families or individuals who could have no longer afforded services.

B. Education of the General Public

Difficulties arise any time one individual is unaware of another individual’s personality traits or characteristics. This may cause miscommunications or misunderstandings between the individuals because certain behaviors or habits are interpreted incorrectly. As for the young adult with autism, he or she may exhibit certain behaviors that may appear peculiar to the unknowing or uneducated outsider and, consequently, may lead to confusion. For instance, an individual who does not know that persons with autism are sensitive to sounds may ridicule the person for wearing headphones in noisy, public places where headphones are not usually worn. Providing a greater understanding of autism to the public in general will help diminish these incidences of misunderstandings and confusion that may be discouraging or detrimental to the individual with autism.

With greater knowledge, society can become more flexible and tolerant to the particular needs of persons with autism. Employers, universities, and similar institutions can provide better opportunities and accommodations for

109. Financial Security Accounts for Individuals with Disabilities Act of 2007, H.R. 2370, 110th Cong. (amending 26 I.R.C. §§ 501-530 (2000)). While this Act was never passed, the premise behind it remains relevant.

110. *Id.*

111. *Id.* However, the proposed section would still tax the account under section 511 of the code. *Id.*

112. *Id.* Qualified disability expenses are described as “education, medical and dental care, community based support services, employment training and support, moving, and assistive technology,” as well as, “funeral and burial services and property.” *Id.* Once the individual reaches the age of eighteen, qualified disability expenses will also include “housing and transportation.” *Id.*

this population, especially if they know what to expect. Social interactions are likely to become more positive for both the individual without autism and the individual with autism. Eventually, with greater knowledge and understanding, this population is less likely to be segmented from the rest of society, and these individuals will be able to contribute economically, socially, and culturally.

VI. POSSIBLE DIFFICULTIES TRANSITION SERVICES MAY ENCOUNTER

A. Rowley Repeated?

When IDEA was implemented, it enabled qualified children to receive special education services that were previously withheld.¹¹³ However, what was considered “free appropriate public education” and who was to determine it became a topic of litigation in the Supreme Court.¹¹⁴ The most widely cited case, *Board of Education v. Rowley*,¹¹⁵ developed the framework for determining the level of appropriate education.

In *Rowley*, parents of a young deaf student argued for a sign-language interpreter to attend all of their child’s academic classes.¹¹⁶ School officials disagreed, concluding that the student did not require the assistance of an interpreter.¹¹⁷ Evidence showed that the student was not struggling academically or socially and was actually performing above average.¹¹⁸ The parents then filed a constitutional action claiming that they had been denied a “free appropriate public education.”¹¹⁹ The Supreme Court held that while an interpreter may help the young learner reach her full potential, IDEA did not carve out the “additional requirement that the services so provided be sufficient to maximize each child’s potential ‘commensurate with the opportunity provided other children.’”¹²⁰ According to the Supreme Court, only an “equal” educational opportunity was required by the Act.¹²¹ The Court also laid out the two-part test for determining whether a free appropriate public education is adequate: 1) “has the State complied with the procedures

113. Terry Jean Seligmann, *Rowley Comes Home to Roost: Judicial Review of Autism Special Education Disputes*, 9 U.C. DAVIS J. JUV. L. & POL’Y 217, 221 (2005). These children would routinely be excluded from school, entered into inadequate programs, or left to struggle on their own. *Id.*

114. 20 U.S.C. § 1400(d)(1)(A) (2006); Martin A. Kotler, *The Individuals with Disabilities Education Act: A Parent’s Perspective and Proposal for Change*, 27 U. MICH. J.L. REFORM 331, 353-54 (1994).

115. *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982).

116. *Id.* at 184.

117. *Id.* at 184-85. The school provided an interpreter for two weeks, but the interpreter indicated that the child did not need such services. *Id.* at 184.

118. *Id.* at 185.

119. *Id.*

120. *Id.* at 198.

121. *Rowley*, 458 U.S. at 198. In other words, all students must receive equal access to education or an appropriate education and not the best possible program. *Id.* at 200.

set forth in the Act?"; and 2) "is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?"¹²² As a result of this case, many parents who believe in one particular methodology of education for their child with special needs may be at odds with the school who believes in another methodology.¹²³ The parents may then have to succumb to the school's preference of methodology at the expense of their child's education.¹²⁴

Unfortunately, for autism, there are a multitude of early intervention methodologies and services.¹²⁵ School districts are likely to choose the less expensive option, particularly because they are not required to pick the more educationally superior one so long as the option chosen provides some sort of educational benefit.¹²⁶ This choice may lead to a less individualized or tailored program that will not enable the child to reach his or her full potential.¹²⁷

The difficulties that IDEA encountered by its broad definition of "free appropriate public education" may also suggest similar difficulties that "transition services" may encounter in the future, once individuals with autism begin their transition IEP. While transition services can be implemented through IDEA, problems may emerge if individuals seek particular modes of transitioning, especially if they are contrary to those that the schools are willing to offer. For example, similar to the various early intervention programs, the literature contains multiple models of adult employment services.¹²⁸ These include supported employment models, entrepreneurial supports, secure employment, and sheltered workshops.¹²⁹ The individual may argue for secure employment to complete the transition into the job market, yet the school may

122. *Rowley*, 458 U.S. at 206-07.

123. Seligmann, *supra* note 113, at 225-26.

124. *Id.* at 280. Most courts have "deferred to the school district" provided that the *Rowley* test has been satisfied. *Id. See, e.g., Rettig v. Kent City Sch. Dist.*, 720 F.2d 463, 466 (6th Cir. 1983) (upholding the school's education program for a child with autism and mental retardation while rejecting the child's parent's request for specific programs on the grounds that such programs were unnecessary because the child was already benefiting from his current instruction).

125. Some of the more well-known interventions include discrete trial, floortime, and TEACCH. In discrete trials, the child's behavior is directed at all times. O. Ivar Lovaas, *Behavioral Treatment and Normal Educational and Intellectual Functioning in Young Autistic Children*, 55 J. CONSULTING & CLINICAL PSYCHOL. 3 (1987) (demonstrating the effectiveness of early behavioral intervention by directly addressing specific behaviors). Floortime is understanding the dyad between the child and parent through play on the floor. STANLEY I. GREENSPAN, *INFANCY AND EARLY CHILDHOOD: THE PRACTICE OF CLINICAL ASSESSMENT AND INTERVENTION WITH EMOTIONAL AND DEVELOPMENTAL CHALLENGES* 438 (1992). TEACCH works with the individual child's strengths and weakness in order to develop specific life skills. Gary B. Mesibov, *A Comprehensive Program for Serving People with Autism and Their Families: The TEACCH Model*, in *AUTISM IN CHILDREN AND ADULTS: ETIOLOGY, ASSESSMENT, AND INTERVENTION* 85 (Johnny L. Matson ed., 1994).

126. Seligmann, *supra* note 113, at 286.

127. *See* Kotler, *supra* note 114, at 353 (discussing shortcomings of IDEA with its failure to define "appropriate" education).

128. Gerhardt & Holmes, *supra* note 60, at 1093-95.

129. *See id.*

withhold the funds to allow for the educational opportunity. Consequently, the school may succeed in implementing a potentially cost-effective, cookie-cutter program so long it appears beneficial to the individual.

However, it is important to note that transition services specifically indicate that the individuals' desires and needs are to be considered when creating a transition plan.¹³⁰ Therefore, while this can serve as the individual's basis for implementing his or her chosen plan, courts may never have to contemplate the difficult question of whether one methodology is better than another. The future ultimately holds the answer to how transition services will be delivered to students with autism.

B. Funding

While the government has shown the initiative to introduce services that will enable the individual to transition smoothly into adulthood, the programs do not come without expense. To keep the services and programs running, funding is required. Furthermore, even if the program continues, it may be unable to reach all individuals who qualify because of limited funding. Therefore, knowing which programs are most effective, whether cost-effective or behaviorally effective, may help the states and federal government distribute funds accordingly. States have recognized this need to examine funding so that it is allocated appropriately.¹³¹ Hopefully, states will be able to provide better funding for effective programs and make such programs more widely available.

C. The Need for a Centralized Location of Information

Transitioning can become a confusing period for the individual, especially with the numerous forms of legislation as listed above. A sense of clarity can be achieved by creating one location where a knowledgeable person can explain all of the available various laws or services that the individual with autism can employ. By having such a center where information about transitioning is disseminated, the individual can be provided with many different options and can also choose the most appropriate option given the individual's particular situation. Consequently, the individual will more likely fulfill his or her transition goals.

VII. CONCLUSION

Out of every 150 children, one will be diagnosed with an Autism Spectrum Disorder.¹³² Eventually, these children will become adolescents and then

130. 20 U.S.C. § 1401(34)(B) (2006).

131. See PA. AUTISM TASK FORCE, *supra* note 22; WASH. AUTISM TASK FORCE, *supra* note 22, at 31.

132. Rice, *supra* note 5, at 12.

young adults. More likely than not, these children are receiving intensive services in order to develop their communication and social skills and increase other adaptive behaviors. The intensity of the services provided may decrease over time as the child obtains new adaptive skills. However, to reduce services suddenly may cause the individual to regress into old habits or behaviors thought to have been extinguished and result in the emergence of negative behaviors. To prevent this outcome, it is important that these individuals are not left unsupported as they age out of the system.

Transition into adulthood should begin while the individual is still in school and can still access the provisions and funding of IDEA. While federal legislation has not recognized person-centered or self-determination theories to transitioning, states have considered such theories.¹³³ These ideas enable the individual to become more involved in the transitioning process, which, in turn, holds the individual accountable for decisions or choices he or she has made. Accountability then leads to a more responsible, confident young adult.

The state and federal governments can also be a contributing party to the successful transition. The government can provide incentives, such as student loan forgiveness programs, to encourage individuals to serve the adult population. Incentives can also be offered to employers to increase the number of businesses that are amenable to the needs of individuals with autism. State universities must be adequately prepared to meet the special needs of the individual. The government can create Medicaid waivers which are solely for individuals with autism so that services are less likely to be interrupted. Financial security of these individuals whose expenses outpace income can be resolved through legislation that seeks to protect these individuals' funds. The state can encourage the education of all of its citizens with autism, which can then facilitate interactions between individuals with autism and individuals without autism. Finally, the individual can also take advantage of a variety of existing legislation, whether or not such legislation was enacted specifically for individuals with autism. By doing so, the individual may be able to meet personal transition goals, such as employment or independent housing.

Implementation of transition under IDEA has yet to be litigated in court. How courts will interpret transition services when a disagreement ensues between school and pupil has not been determined. Additionally, individuals with autism will be confronted with a multitude of programs and opportunities to help with the transition into adulthood. Having a single center available to them in order to provide explanations and options between the various programs and legislation will enable the individual to tailor choices towards individual needs and increase the chances of a more successful transition. However, because of limited funding, individuals should be aware of the possibility that transition services may not be readily available.

133. *See supra* Part IV.A.

Some states have recognized the need to continue services into adulthood, while others are still focused on the developmental course of autism. The focus on the developmental course of autism is not to be diminished. It is important to understand autism and to provide services as early as possible because it has been shown to lead to better outcomes. However, the focus on the early intervention years should not come at the expense of the adult years because if it does, all the effort, time, and money that were poured into the individual during childhood may be diminished. Autism is not temporary; research and funding should be dedicated to understanding autism as not merely a developmental issue, but rather as a lifelong process.