OSEP has issued an important guidance letter to State Directors of Special Education about school district IDEA/IEP obligations for highly mobile students, including children in military families, foster care, and those who are homeless. The letter made clear that transferring students with IEPs are to receive comparable services, meaning similar or equivalent services, including ESY when applicable. It also stated that schools must promptly complete evaluations of children who move mid-evaluation; urges 30 day completion for highly mobile children; and clarifies that the evaluation process once begun cannot be stopped unilaterally by the school district for RTI. OSEP encouraged the States to share the letter with Local Education Agencies (e.g., school districts) and other entities providing services to highly mobile children. The July 2013 letter will be a useful tool as parents and school districts collaborate together at the IEP table. This is a summary of the letter so as to better inform parents and advocates. The letter is attached to this post and is also available here: [http://bit.ly/osepmilitjuly](http://bit.ly/osepmilitjuly)

BACKGROUND

Highly mobile children with disabilities, including military, homeless, and foster children, face particular challenges when they move between school districts. Parents and students must navigate a new maze of state laws, regulations, and new school district policies and personnel each time they move. They also must work with the new district to obtain needed special education services. There are many school districts and school personnel who provide excellent services for highly mobile children with disabilities, helping them learn and succeed. They are to be praised for their contributions and dedication. Unfortunately, there are some school districts which, at times, do not provide appropriate services because they believe the family will move again and are unable to do much to resolve any conflicts. Some school districts have even reduced educational services sharply for some families who have entered their districts. These districts seem to realize the parents cannot afford to go to due process and will move away before any conflict resolution process can be complete.


OSEP’S NEW GUIDANCE TO STATE DIRECTORS OF SPECIAL EDUCATION

1. OSEP urged that highly mobile students receive timely and expedited evaluations and eligibility determinations, preferably within 30 days as appropriate for the child’s individual needs.
a. Districts Should Complete Evaluations Within 30 days if Possible.

The letter acknowledged that IDEA provides 60 days for school districts to evaluate children (and even longer if state regulations permit it). 34 CFR §300.301(c)(1); (d)(2); (e). This can cause problems when children move during their initial evaluation, because the federal law appears to permit the new school district to conduct its own evaluation before finding the child eligible and providing services. 34 CFR 300.323(f). A child may move on the 50th day of an evaluation only to begin the entire process over again in the new district.

OSEP stated that the new and old school districts must coordinate to ensure prompt completion of the evaluation, including a timely exchange of records. OSEP further wrote, "we strongly encourage school districts to complete their evaluations of highly mobile children within expedited time frames (e.g., within 30 days)" whenever possible. "Highly mobile children experience recurring educational challenges to a much greater degree than other children, and the special education and related services available under IDEA are critical to helping eligible highly mobile children with disabilities meet these educational challenges." The new district should promptly discuss the applicable IDEA and IEP rules with parents and connect them with their Parent Training and Information Centers.


When children move into new school districts mid-evaluation, their prior districts have already determined, based on their experience, that an evaluation is necessary because they may need special education and related services. But rather than finishing the evaluations, some new school districts have put the evaluations off until they have fully implemented a Response to Intervention process. This is inappropriate, according to OSEP because it can “unnecessarily delay the initial evaluation of highly mobile children." "If a child transfers to a new school district during the same school year before the previous school district has completed the child's evaluation, the new school district may not delay the evaluation or extend the evaluation time frame in order to implement an RTI process,” OSEP wrote.

During this evaluation process the new district can voluntarily provide interventions to a student while it finishes the evaluation. These students have not been found eligible for IDEA services, and so the district does not have to provide them with a Free Appropriate Public Education (FAPE) yet. They differ from children who have been found eligible before they moved, as discussed below.

2. OSEP stated that school districts must provide a Free Appropriate Public Education, including "comparable services" to students with IEPs who transfer districts, as IDEA 2004 and the regulations require. Comparable services mean similar or equivalent.

If a child moves within the same state, the district must provide comparable services until it develops a new IEP or adopts the child's prior IEP. If the child moves out of state, the new district must do this until it conducts its own evaluation (if determined to be necessary) and develops a new IEP. 34 CFR 300.323(e)-(f).
"This obligation to provide comparable services is fully applicable to highly mobile children with IEPs who transfer into new school districts, whether in the same State or a different State, in the same school year." OSEP further explained. "The Department interprets 'comparable services' to mean services that are similar or equivalent to those services that were described in the child's IEP from the previous school district." This is consistent with the language in the Department of Education’s formal commentary included with the Federal Regulations when they were published, 71 Federal Register 46540, 46681 (August 14, 2006) ("The Department interprets ‘comparable’ to have the plain meaning of the word, which is ‘similar’ or ‘equivalent.’ Therefore, when used with respect to a child who transfers to a new public agency from a previous public agency. . . ‘comparable’ services means services that are ‘similar’ or ‘equivalent’” to those in the child’s previous IEP.) The Federal Register notice was cited by OSEP in the letter and is here: [http://bit.ly/idearegcomm](http://bit.ly/idearegcomm)

3. OSEP explained that comparable services includes Extended School Year services (ESY), services typically provided during the summer to ensure FAPE.

Some districts have refused to provide ESY services to children who move into the district, reasoning that they only need to provide “comparable services” during the normal school year. This is inappropriate. "The new school district generally must provide ESY services as comparable services to a transfer student whose IEP from the previous school district contains those services," OSEP said. The letter further described the ESY services to be provided to families, depending on whether the student has moved within the same state or out of state. OSEP made clear that comparable ESY services are those that are similar or equivalent to those in the child’s IEP from the previous district.

4. Conclusion. The letter concludes with a list of advocacy and information resources for highly mobile children. While some portions of the letter are limited to military, foster, and homeless children, other portions are relevant for all children who move. These include the definition of comparable and the requirements to provide comparable services, such as ESY.

The OSEP letter is attached to this post and is also available here: [http://bit.ly/osepmilitjuly](http://bit.ly/osepmilitjuly)

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Jess Butler

[jessica@jnba.net](mailto:jessica@jnba.net)