



MARCH 28, 2014

**(X) ACTION REQUIRED
() INFORMATIONAL**

TO: Local Educational Agencies
Public Agencies (providing educational services to children with disabilities)

CC: Public Charter School Board
Deputy Mayor of Education

FROM: Jesús Aguirre, State Superintendent of Education

RE: Individualized Education Program (IEP) Implementation for Transfer Students Policy

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INTRODUCTION

The purpose of this Memorandum is to establish state-level procedures and timelines for the development and implementation of Individualized Education Programs (IEPs) for students transferring into local educational agencies (LEAs) in the District of Columbia. In order to successfully effectuate IEPs in a manner that most appropriately meets the individualized needs of students who transfer, LEAs shall facilitate the timely transfer of records; provide comparable services; and complete evaluations when necessary to determine eligibility under Part B of the Individuals with Disabilities Education Act (IDEA). It is the expectation of the Office of the State Superintendent of Education (OSSE) that all LEAs adhere to this policy to ensure that a free appropriate public education (FAPE) is made available to all eligible children with disabilities.

MONITORING AND COMPLIANCE

The U.S. Department of Education's Office of Special Education Programs (OSEP) requires that every state education agency (SEA) monitor local educational agencies (LEAs) to ensure compliance with Part B of the Individuals with Disabilities Education Act (IDEA). A finding of LEA noncompliance by the Office of the State Superintendent of Education (OSSE) will result in corrective actions for each area of noncompliance and may result in the requirement to submit an improvement plan. OSSE may also recommend or require training and technical assistance for LEA staff when crafting corrective actions. All items of noncompliance shall, by federal law, be corrected within one year of the finding; sustained noncompliance by an LEA may result in sanctions that include potential withholding of Part B grant funding.¹ Consistent with the IDEA and its regulatory framework, all LEAs shall comply with monitoring requirements established annually by OSSE, which include the collection and submission of both quantitative and qualitative data that support monitoring for regulatory compliance and programmatic quality. Additionally, a subset of LEAs will be

¹ 34 C.F.R. §300.600(a)(3)



selected for OSSE's annual monitoring process. OSSE, in its role as SEA, ensures FAPE by meeting with other public agencies providing education services to children with disabilities to review and discuss the delivery of special education services. If any noncompliance is identified during OSSE's review, the public agency will be asked to take corrective action, as appropriate.

LEA RESPONSIBILITY TO REQUEST OR PROVIDE STUDENT RECORDS

Once a student has enrolled in a new LEA in the District of Columbia, the new LEA shall request the student's records from the previous LEA within five (5) business days of enrollment, including any existing IEP, supporting evaluation documents, and any other records pertaining to the provision of special education or related services to the student.² As part of its reasonable efforts to obtain records from the previous LEA, the new LEA shall specifically ask the parents and the previous LEA whether the student has been referred previously as a potential "child with a disability" and request such records documenting any prior written referral.³ LEAs located in the District of Columbia shall respond to a request for student records of a previously enrolled student by providing such records within ten (10) business days of the receipt of the request,⁴ even if the provision of such records necessitates the physical transfer of paper records. In the context of out-of-state transfers, the new LEA shall upload a transfer student's existing IEP into SEDS within ten (10) business days of receipt from the previous LEA.⁵ In the context of student transfer between LEAs, the new LEA and previous LEA are not required to seek consent from the parent or adult student for the transfer of records.

After exercising reasonable efforts to obtain the student's records, if the new LEA is unable to obtain the IEP from the previous LEA or from the parent, the new LEA is not required to provide special education and related services to the student.⁶ However, even if the parent is unable to provide the student's IEP from the previous LEA, if the new LEA decides that an evaluation is necessary because it has reason to suspect that the student has a disability (*e.g.* communication from the parent indicating a recent need for or receipt of special education services, etc.), it shall fulfill its Child Find obligation⁷ to evaluate the student in a timely manner to determine eligibility.

LEA RESPONSIBILITY TO COMPLETE PENDING EVALUATIONS

- A. Students Who Have Been Referred for Special Education Evaluation but Whose Initial Evaluation Has Not Begun.** If a student enrolls in a new LEA after the student has been previously identified as a potential "child with a disability," the new LEA has affirmative Child Find obligations. The new LEA shall apply the date of written referral from the previous within-state LEA as the start date to the District of Columbia's initial evaluation timeline. In the case of an out-of-state transfer, the date of documented parental consent given to the prior LEA shall be the start date of the District's timeline. If there is no existing documentation of written referral or parental consent, the new

² 34 CFR §300.323(g)(1)

³ Reasonable efforts to contact the parent and the previous LEA include a minimum of three attempts using different modalities (*e.g.*, phone, mailed correspondence, and in-person) on three different dates.

⁴ 5 DCMR §E-3019.5(a)

⁵ OSSE's LEA Data Management Policy (December 9, 2010)

⁶ Office of Special Education and Rehabilitative Services, Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations (Revised September 2011)

⁷ The term *Child Find* refers to a process of continuous public awareness activities, designed to locate, identify, and evaluate children who may require early intervention or special education services, that is required of LEAs under the Individual with Disabilities Education Act (IDEA).



LEA shall submit a written referral for Part B services on behalf of the student on the same date that it has knowledge of the existing referral (*e.g.* verbal referral from the previous LEA or verbal confirmation from parent). In this case, the new LEA shall exercise reasonable efforts in obtaining parental consent for initial evaluation. If the parent does not provide consent for the initial evaluation or fails to respond to a request to provide consent, the LEA may, but is not required to, pursue the initial evaluation of the student by utilizing the procedural safeguards provided by IDEA regulations, including mediation and due process procedures.⁸

- B. Students with Initiated, but Incomplete Initial Evaluations.** If a student enrolls in a new LEA after the student's previous LEA has begun the process of conducting an initial evaluation, both the previous LEA and new LEA shall coordinate efforts, as necessary and as expeditiously as possible, to ensure prompt completion of a full evaluation within the District of Columbia's initial evaluation timeline.⁹ The new LEA shall request any relevant evaluation data and documentation within five (5) business days of the student's enrollment. The previous LEA shall assist in completing the evaluation within the evaluation timeline by providing any relevant evaluation data and documentation within ten (10) business days of the receipt of the request. The new LEA shall apply the date of written referral from the previous within-state LEA as the start date to the District of Columbia's initial evaluation timeline. In the case of out-of-state transfer, the date of documented parental consent shall be the start date to the District's timeline. If a new LEA that receives evaluation data from a previous LEA determines that such data or data procedures are inappropriate or inaccurate in nature, it may decide to reinstate the initial evaluation. The new LEA, however, must comply with the initial evaluation timeline as determined in this section.

LEA RESPONSIBILITY TO PROVIDE COMPARABLE SERVICES

If a student with an existing IEP transfers to an LEA in the District of Columbia within the same school year, the new LEA, in consultation with the parents, shall provide FAPE to the student in the form of comparable services.¹⁰ *Comparable services* are services that are similar or equivalent to those described in the student's IEP from the previous LEA.¹¹ For the purposes of this Policy, comparable services also include equitable services provided to parentally-placed students. (See page 4 for more information regarding equitable services.) The new LEA shall document and track the delivery of comparable services in SEDS. The new LEA is required to implement comparable services within twenty (20) calendar days of receipt of the transfer IEP.

LEA RESPONSIBILITY TO DETERMINE THE APPROPRIATENESS OF AN EXISTING IEP, EVALUTE WHEN NECESSARY, AND IMPLEMENT AN ADOPTED/UPDATED OR NEWLY DEVELOPED IEP

- A. Students Who Transfer from One LEA to Another LEA within the District of Columbia with an Existing IEP.** Within thirty (30) calendar days of enrollment, the new LEA shall decide to either adopt the student's IEP from the previous LEA or develop and implement a new IEP that meets the

⁸ 34 CFR §300.300(a)(3)

⁹ Under the circumstance in which a student enrolls in an LEA after the commencement of an initial evaluation and prior to a determination of eligibility, the District of Columbia's initial evaluation timeframe does not apply to the new LEA only if the new LEA is making sufficient progress to ensure a prompt completion of the evaluation and the parent and new LEA agency agree to a specific time when the evaluation will be completed. 34 CFR §300.301(d)(2) and (e)

¹⁰ 34 CFR §300.323(e) and (f)

¹¹ 71 FR 46540, 46682 (Aug 14, 2006)



applicable requirements¹² of the IEP process.¹³ A new LEA that determines that it is appropriate to develop a new IEP shall finalize the IEP within sixty (60) calendar days of enrollment.

- B. Students Who Transfer to the District of Columbia with an Existing IEP from Another State.** A new LEA that receives information regarding an out-of-state student's prior eligibility under IDEA or previous receipt of special education services shall treat the information as a referral and document the referral in writing in SEDS within two (2) business days of receipt. The new LEA shall adhere to the record transfer requirements in this Policy to request and obtain the student's records from the previous LEA. The LEA shall begin collecting student-level data immediately upon referral, to conduct an evaluation in the case that it does not receive records from the previous LEA. After thirty (30) calendar days from referral, the LEA shall use the data it has collected and any other data received, including the current IEP from the previous LEA if applicable, to determine if it is appropriate to conduct an evaluation of the student.
- i. ***Evaluation of Students Transferring from Out-of-State Determined Necessary.*** If the LEA determines that it is necessary to conduct an evaluation, it shall complete the evaluation and determine eligibility under Part B of the IDEA within sixty (60) calendar days of referral. If a student is determined eligible for special education services, the new LEA shall develop and finalize a new IEP that meets the applicable requirements of the IEP process within ninety (90) calendar days of referral. If the parent does not provide consent for the evaluation or fails to respond to a request to provide consent, the LEA may, but is not required to, pursue the evaluation of the student by utilizing the procedural safeguards provided by IDEA regulations, including mediation and due process procedures. If the parent does not provide consent for an evaluation, the LEA shall issue a prior written notice (PWN) before ceasing the provision of comparable services.
 - ii. ***Evaluation of an Out-of-State Transfer Student Determined Unnecessary.*** A new LEA that determines that it is unnecessary to conduct an evaluation, based on its review of the transfer IEP and evaluation data (*i.e.* student-level data is current and sufficient), shall conduct an annual IEP review and update and finalize the IEP within sixty (60) calendar days of referral, using the District of Columbia's IEP criteria and format in SEDS. In such cases, the triennial evaluation date will not be impacted.
- C. Students Who Transfer from a Private School with a Services Plan.** A student transferring to an LEA from a private school may have a services plan. A *services plan* is a document that specifies the equitable services that will be provided to the student and the terms of service provision. *Equitable services* are special education and related services provided to parentally-placed private school students with disabilities in accordance with IDEA. Generally, services plans are less comprehensive than IEPs because parentally-placed students do not have an individual entitlement to any or all of the services that the students would receive if enrolled in a public school. Therefore, to ensure that a transfer student with an existing services plan receives the appropriate types of services and levels of service under Part B of the IDEA, the LEA shall complete

¹² Newly developed IEPs must meet the requirements of 34 CFR §§300.320 through 300.324; OSSE's Individualized Education Program (IEP) Process Policy (August 30, 2011).

¹³ 34 CFR §300.323(e)



an evaluation of the student and determine eligibility within sixty (60) calendar days of enrollment. If the student is determined eligible, the LEA shall develop and finalize a new IEP that meets the applicable requirements of the IEP process within ninety (90) calendar days of enrollment.

D. Students Receiving Services Under IDEA Part C. The DC Early Intervention Program (DC EIP) shall inform LEAs of all children who are potentially eligible for Part B services and who will soon reach the age of three on a monthly basis, unless the family has opted out of providing the LEA with the child's personally identifiable information.¹⁴ A Part B representative from the LEA who receives an invitation to attend a transition conference is expected to attend and participate. The transition conference is held with the approval of the family, no earlier than nine (9) months and no later than three (3) months prior to the child's third birthday. During the transition conference, DC EIP and the LEA are required to clearly explain the difference to parents between the Part C extended Individualized Family Service Plan (IFSP) option (hereinafter referred to as "extended option") and Part B IEP service delivery models.¹⁵

i. **Part C Extended IFSP Option.** Effective July 1, 2014, a child who has a current IFSP and is found eligible for Part B preschool special education and related services, has the option to access early intervention services through an IFSP until the beginning of the school year following his or her fourth birthday. Under the extended option, early intervention services identified on a child's IFSP shall include an educational component that promotes school readiness and incorporates pre-literacy, language, and pre-numeracy skills. Upon utilizing the extended option, a parent of a child with a disability may choose to terminate the child's participation in Part C at any time and, if eligible, receive free appropriate public education (FAPE) through an IEP under Part B.

Reestablishing eligibility upon transition from Part C to B, after participation in the extended option, is not necessary unless an LEA determines additional assessments are needed. If the LEA determines that additional assessments are not necessary, the LEA shall develop and finalize a new IEP that meets the applicable requirements of the IEP process within thirty (30) calendar days of receiving the notice of the parent's decision to transition the child to Part B services. If the LEA determines that additional assessments are necessary, the LEA shall complete an evaluation of the student and determine eligibility within sixty (60) calendar days of receiving notice of the parent's decision to transition the student to Part B services. In such cases, an IEP shall be developed for the child no later than thirty (30) calendar days prior to the beginning of the school year after the child's fourth birthday.

ii. **Development of the IEP for Children Previously Served Under Part C.** If a child served by Part C is determined to be eligible under Part B, and the parent chooses to receive special education preschool services through an IEP rather than the Part C extended option, the LEA shall convene an IEP Team meeting to develop an IEP by the child's third birthday. If a child who was previously served under Part C transfers into an LEA in the District of Columbia from

¹⁴ 5 DCMR §A-3109

¹⁵ 34 CFR §303.209(f)(2)(i)



another state without an IEP, the LEA must treat the Part C record as a referral for evaluation under Part B, and adhere to the requirements enumerated in Section (B)(i) under “Students who transfer to the District of Columbia with an existing IEP from another state” on page 4.

LEA RESPONSIBILITY TO ADDRESS AN EXPIRED OR SOON TO BE EXPIRING IEP

An LEA may not implement an expired IEP.¹⁶ A new LEA that receives an expired IEP, with no record or documentation of a formal exit from special education (*i.e.* evidence that the student was appropriately exited due to a determination of non-eligibility or parent’s withdrawal of consent for services), shall presume that the student remains a “child with a disability” entitled to services under Part B of IDEA. In such cases, the new LEA shall adhere to the procedures and timelines set forth below, request appropriate records, provide comparable services, and conduct an evaluation to ensure that the student is receiving appropriate services and to resolve noncompliance in the student’s IEP record. If a student’s IEP Team determines that the student is no longer eligible for services under Part B of IDEA, the LEA shall complete all procedural and documentation requirements before ceasing the provision of comparable services.

An LEA that receives a within-state IEP that will expire within thirty (30) calendar days of enrollment shall conduct an evaluation, develop, and implement a new IEP within sixty (60) calendar days of enrollment. An LEA that receives an out-of-state transfer IEP that will expire within thirty (30) calendar days of enrollment shall conduct an evaluation within sixty (60) calendar days of enrollment to determine whether the student is a “child with a disability” under the state-level criteria and develop a new IEP within ninety (90) calendar days of enrollment.

LEA RESPONSIBILITY TO EFFECTUATE AN IEP UNTIL FORMAL EXIT OR GRADUATION WITH DIPLOMA

LEAs are responsible for adhering to all procedural and documentation requirements associated with developing and implementing IEPs until students formally exit special education (*i.e.* student is determined no longer eligible under Part B of IDEA or parent withdraws consent for services) or graduate from high school with a regular high school diploma.¹⁷ LEAs shall continue to provide special education and related services to students, in accordance to their IEPs, who graduate with an alternative certificate until the end of the semester that the student turns twenty-two (22) years old.¹⁸

RESPONSIBILITIES REGARDING STUDENT TRANSFERS BETWEEN DCPS AND DISTRICT CHARTER SCHOOLS

A District Charter LEA is a public charter school that has elected the District of Columbia Public Schools (DCPS) as the LEA for special education purposes.¹⁹ Student transfers between DCPS and District Charter LEAs and student transfers between two District Charter LEAs are considered within-LEA transfers for the purposes of compliance with Part B of the IDEA. To demonstrate adherence with the requirements outlined in this Policy, DCPS and District Charter LEAs shall comply with all requirements regarding the transfer of student records, completion of evaluations when appropriate, and IEP implementation/effectuation. For example, if a student transfers from DCPS to a District Charter, the District Charter must comply with all requirements in this Policy, including records request, provision of comparable services, review of the student’s IEP, evaluation of the student, and development of a new

¹⁶ The IEP must have been “in effect” in the previous LEA. 34 CFR § 300.323(e) and (f)

¹⁷ 34 CFR §300.102(a)(3)(i)

¹⁸ 34 CFR §300.102(a)(3)(ii); 5 DCMR §E-3002.1(b)

¹⁹ D.C. Code §38-1802.02(19)



IEP, as appropriate. DCPS, as the LEA for special education purposes, shall complete the appropriate state-level form affirming that the District Charter or DCPS school within its LEA has access to the necessary student records and has initiated service implementation according to the current IEP within twenty (20) calendar days of enrollment. The completed form shall be uploaded in SEDS within five (5) business days of completion.

ADDITIONAL GUIDANCE

This memorandum supersedes all previous policy, memoranda, and guidance issued by the state educational agency (SEA) on this topic. Please direct any questions regarding the content of this document to OSSE, Division of Specialized Education at OSSE.DSEPolicy@dc.gov.

PROPOSED