UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL 19 2013

Dear State Director of Special Education:

Ensuring a high-quality education for highly mobile children is a critical responsibility for all of us. Highly mobile children include children experiencing frequent family moves into new school districts, such as military-connected children, migrant children, children in the foster care system, and children who are homeless. While these children often possess remarkable resilience, they also experience formidable challenges as they cope with frequent educational transitions. The purpose of this letter is to address concerns expressed by stakeholders regarding the unique educational needs of highly mobile children with disabilities under the Individuals with Disabilities Education Act (IDEA) and to seek your assistance in improving the educational stability of, and post-school outcomes for, these highly mobile children.[1]

Background

The U.S. Department of Education (Department) issues this letter and list of resources to provide guidance, and describe several important principles that States, school districts, school staff, parents, and other stakeholders may find helpful in ensuring that highly mobile children with disabilities receive required special education and related services designed to meet their unique needs in a timely manner.[2] It is important for school administrators and teachers, including special education administrators and special education teachers, to have accurate and timely information to meet their responsibilities to make a free appropriate public education (FAPE) available to highly mobile children with disabilities under IDEA, including affording all of IDEA's rights and protections to eligible children and their parents when the children change school districts. Specifically, this letter addresses issues that have been raised regarding IDEA's requirements for timely evaluations, including when a response to intervention (RTI) framework is used prior to completing evaluations of highly mobile children, and the provision of comparable services, which could include extended school year services, when a highly mobile child transfers into a new school district.

[1] Highly mobile children with disabilities are also protected by two other Federal laws: Section 504 of the Rehabilitation Act of 1973 (Section 504), which prohibits disability discrimination by entities, such as public schools, that receive Federal financial assistance (29 U.S.C. § 794, 34 CFR part 104); and Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibits disability discrimination by public entities, including public schools, regardless of whether they receive Federal financial assistance (42 U.S.C. §§ 12131-12134, 28 CFR part 35). The Office for Civil Rights (OCR) in the U.S. Department of Education enforces Section 504 in public schools and, along with the U.S. Department of Justice, enforces Title II in public schools. Information about OCR enforcement is available on OCR's website at www.ed.gov/ocr

[2] This letter is intended to provide guidance to States and school districts. It does not set forth any new requirements, nor does it create or confer any rights for or on any person or require specific actions by any State, locality, or school district.

Issue #1: Highly mobile children should have timely and expedited evaluations and eligibility determinations.

Requirements: Under IDEA, all children who are suspected of having a disability and who are in need of special education and related services, including highly mobile children, must be evaluated in a timely manner and without undue delay so that eligible children can receive FAPE. 34 CFR §§ 300.101, 300.111, and 300.201. Generally, IDEA requires completion of initial evaluations within 60 days of receiving parental consent for the evaluation or within the State-established time frame. 34 CFR §300.301(c)(1). When a child transfers to a new school district in the same school year, whether in the same State or in a different State, after the previous school district has begun but has not completed the evaluation, both school districts must coordinate to ensure completion of the evaluation. This must occur as expeditiously as possible, consistent with applicable Federal regulations. However, the relevant time frame does not apply when the following two conditions are present: the new school district is making sufficient progress to ensure prompt completion of the evaluation; and the parent and new school district agree to a specific time when the evaluation will be completed. 34 CFR §300.301(d)(2) and (e).

Section 300.323(g) of the IDEA regulations requires school districts to promptly exchange relevant records when a child changes school districts, subject to the Family Educational Rights and Privacy Act (FERPA).[3] Relevant records include existing evaluation data, consistent with 34 CFR §300.305. Prompt exchange of any relevant records avoids duplicating previously conducted evaluations, and provides critical data to the new school district to ensure the timely completion of the evaluation.

Many States and school districts use a multitiered instructional framework, often referred to as RTI, as a schoolwide approach to address the needs of students, including struggling learners and students with disabilities. RTI integrates assessment and intervention within a multilevel instructional and behavioral system. The IDEA regulations include a provision mandating that States allow, as part of their criteria for determining whether a child has a specific learning disability, the use of a process based on the child's response to scientific, research-based intervention. *See* 34 CFR §300.307(a)(2). However, once parental consent has been obtained for an initial evaluation to determine if the child needs special education and related services, the school district must not delay completion of the evaluation because an RTI process is pending. Rather, the school district must adhere to the relevant evaluation time frame described in 34 CFR §300.301, unless extended by mutual written agreement of the school district and the child's parents. *See* 34 CFR §300.309(c).

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[3] The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, generally requires the prior written consent of a parent or eligible student (i.e., a student 18 years of age or older or enrolled in a postsecondary institution) for the disclosure of personally identifiable information from education records; however, there are a number of exceptions to this prior consent requirement. In general and consistent with FERPA, IDEA's confidentiality provisions also require prior written consent for disclosures of personally identifiable information contained in education records, unless a specific exception applies. *See* 34 CFR §300.622. The exception to the prior consent requirement that would be relevant to the disclosure of education records of highly mobile students is in 34 CFR §99.31(a)(2), which permits disclosure of personally identifiable information from education records without prior written consent to officials of a school or school district where a student is enrolled, or seeks to enroll so long as the disclosure is for purposes related to the student's enrollment or transfer.

Analysis: There are compelling reasons for school districts to complete evaluations and eligibility determinations for highly mobile children well within the evaluation time frame that is applicable in a State, and we strongly encourage school districts to complete their evaluations of highly mobile children within expedited time frames (e.g., within 30 days), consistent with each highly mobile child's individual needs, whenever possible. As noted above, 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.

It also has been brought to our attention that when some highly mobile children change school districts after the previous school district began, but has not yet completed the evaluation, the new school district postpones the evaluation until the new school district's RTI process has been implemented. This practice could 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. While the new school district may choose to provide interventions while it is in the process of completing the evaluation, it would be inconsistent with the evaluation provisions in 34 CFR §§300.301 through 300.311 for a school district to delay completing an initial evaluation because a child has not participated in an RTI process in the new school district. For more information on the implementation of RTI, see Office of Special Education Programs (OSEP) Memo 11-07 at http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/index.html.

Coordinating assessments by promptly exchanging relevant records is critical to completing evaluations of highly mobile children, and we encourage school districts to be as proactive as possible in providing and securing this information. In addition, we further encourage school districts to promptly explain to parents of highly mobile children the applicable IDEA requirements and connect parents with the appropriate parent training and information center (PTI) funded by OSEP. A link to the OSEP-funded PTIs is provided on the attached resource document.

Issue #2: Comparable services include services during the summer, such as Extended School Year (ESY) services.

Requirements: When a child with an individualized education program (IEP) from a school district transfers into a new school district, whether in the same State or a different State, and enrolls in a new school in the same school year, the new school district (in consultation with the parents) must initially provide FAPE to the child, including the provision of services comparable to those described in the child's IEP from the previous school district. 34 CFR §300.323(e)-(f). In the case of an in-State transfer student, the new school district must provide comparable services until the new school district either adopts the child's IEP from the previous school district or develops and implements a new IEP for the child that meets applicable requirements in State and Federal law. In the case of an out-of-State transfer student, the new school district must provide comparable services until the new school district conducts its own evaluation (if determined to be necessary by the new school district), and develops and implements a new IEP for the child, if appropriate, that meets applicable requirements in State and Federal law. 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.

ESY services are special education and related services that are provided to a child with a disability beyond the normal school year of the school district typically during the summer. Each school district must ensure that ESY services are available to children with disabilities, including highly mobile children, if the IEP Team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child. ESY services must be provided at no cost to parents in accordance with the standards of the State educational agency (SEA). 34 CFR §300.106.

Analysis: It has come to our attention that when some children transfer to a new school district during the summer, the new school district will not provide those children with ESY services as comparable services, because the new school district believes that its obligation to provide comparable services is limited to those services that the child would receive during the normal school year. 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, whether in the same State or in another State, as determined by the child's newly-designated IEP Team in the new school district.[4] Consistent with this interpretation, 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, and may not refuse to provide ESY services to that child merely because the services would be provided during the summer.[5] While the determination of comparable services is made on an individual basis, the new school district's IEP Team may not arbitrarily decrease the level of services to be provided to the child as comparable services.

A transfer student's need for ESY services as comparable services could arise if the child received ESY services from the previous school district during the prior summer and the child's current IEP from that school district reflects the child's need for those services, or if the child's current IEP from the previous school district includes ESY services that have not yet been provided because the child's family has moved. In the case of an in-State transfer student, ESY services deemed comparable services must be provided either for the duration of time determined appropriate by the newly-designated IEP Team or until the new school district adopts the child's IEP from the previous school district or develops and implements a new IEP for the child that is consistent with State and Federal law. 34 CFR §300.323(e). In the case of an out-of-State transfer student, ESY services deemed comparable services must be provided either for the duration of time determined appropriate by the newly-designated IEP Team or until the new school district conducts its own evaluation and eligibility determination, if determined to be necessary by the new school district, and develops and implements a new IEP for the child, if appropriate, that is consistent with State and Federal law. 34 CFR §300.323(f).

We hope this information is helpful in clarifying some of the unique issues highly mobile children with disabilities experience. We have attached a list of resources regarding homeless

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[4] Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46681 (Aug. 14, 2006).

[5] Id. at 46582.

children with disabilities and their families, migrant children with disabilities and their families, military connected children with disabilities and their families, and children with disabilities in foster care. For additional information you also may consult idea.ed.gov for copies of the IDEA regulations and guidance documents, including Question and Answer documents on IEPs and children with disabilities who are homeless.

We are interested in making this document as informative and useful as possible. If you are interested in commenting on this document, please e-mail your comments to highlymobile@ed.gov or write to us at the following address: US Department of Education, 550 12th Street SW, PCP Room 4160, Washington, DC 20202-2600.

We ask you to share this information with your local school districts to help ensure highly mobile children with disabilities receive the appropriate special education and related services in a timely manner. Thank you for your continued interest in improving results for children with disabilities.

Sincerely,

Michael K. Yudin
Acting Assistant Secretary

Melody Musgrove, Ed. D.
Director
Office of Special Education Programs

Resources

Federal Resources

**This document includes links to Web sites and information created and maintained by public and private organizations other than the U.S. Department of Education. This information is provided for the reader's convenience. The U.S. Department of Education does not guarantee the accuracy of the information contained at these Web sites, and does not endorse any views expressed, or products or services offered.

U.S. Department of Education

U.S. Department of Education. (2004). *Education for Homeless Children and Youth Program: Title VII-B of the McKinney-Vento Homeless Assistance Act-Non Regulatory Guidance*. Retrieved July 1, 2013, from http://www2.ed.gov/programs/homeless/guidance.pdf

U.S. Department of Education. (2012). *Dear Colleague Letter from the Education Secretary-Military Connected Families -April 24, 2012*. Retrieved July 1, 2013, from http://www2.ed.gov/policy/gen/guid/secletter/120424.html

U.S. Department of Education, Office of Elementary and Secondary Education. (2012). *Serving Preschool Children Under Title I, Part A of the Elementary and Secondary Education Act of 1965- Non-Regulatory Guidance.* Retrieved July 1, 2013, from http://www2.ed.gov/policy/elsec/guid/preschoolguidance2012.pdf

U.S. Department of Education. (2011). *Questions and Answers On Individualized Education Programs (IEP's), Evaluations, and Reevaluations*. Retrieved July 1, 2013, from http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C

U.S. Department of Education. (2008). *Questions and Answers on Special Education and Homelessness.* Retrieved July 1, 2013, from http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C17%2C

U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, http://www2.ed.gov/about/offices/list/oese/ome/aboutus.html

U.S. Department of Education. (2011). *OSEP 11-07 Response to Intervention (RTI) Memo – January 21, 2011*. Retrieved July 1, 2013, from http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf

U.S. Department of Health and Human Services

U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start, http://www.acf.hhs.gov/programs/ohs/

Resources

Other Helpful Resources

Homeless Children and Youth

National Center for Homeless Education at the SERVE Center, http://center.serve.org/nche/

Military Connected Families with Children with Disabilities

Military Child Education Coalition, http://www.militarychild.org/

Specialized Training for Military Families (STOMP), http://www.stompproject.org/

Children in Foster Care with Disabilities

National Resource Center for Permanency and Family Connections, www.fosteringconnections.org

Instructional Support

National Center on Response to Intervention, http://www.rti4success.org

Parent Support

Parent center Listing, http://www.parentcenternetwork.org/parentcenterlisting.html