

Questions and Answers On Individualized Education Programs (IEPs), Evaluations, and Reevaluations

Revised September 2011
(Revised F-1 and F-3)

Regulations for Part B of the Individuals with Disabilities Education Act (IDEA) were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006. In addition, supplemental Part B regulations were published on December 1, 2008, and became effective on December 31, 2008. Since publication of the regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as important issues arise, or to amend existing questions and answers as needed.

OSERS issues this Q&A document to provide States, State educational agencies (SEAs), local educational agencies (LEAs), parents, and other stakeholders with information regarding the IDEA requirements relating to individualized education programs (IEPs), evaluations, and reevaluations. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations. This Q&A document supersedes the Department's guidance, entitled: Questions and Answers on Individualized Education Programs (IEPs), Evaluations and Reevaluations, Revised June, 2010.

Generally, the questions and corresponding answers presented in this Q&A document required interpretation of the IDEA and its implementing regulations; the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As in this document are not intended to be a replacement for careful study of the IDEA and its implementing regulations. The IDEA, its implementing regulations, and other important documents related to the IDEA and the regulations are found at <http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C>.

If you are interested in commenting on this guidance, please e-mail your comments to OSERSguidancecomments@ed.gov and include IEPs, Evaluations and Reevaluations in the subject of your e-mail, or write to us at the following address: Ruth Ryder, U.S. Department of Education, Potomac Center Plaza, 550 12th Street, SW, room 4108, Washington, DC 20202.

A. Transfer of Students with IEPs from One Public Agency to a New Public Agency

Authority: The requirements for IEPs for students who transfer from one public agency to a new public agency within the same school year are found in 34 CFR §300.323(e), (f), and (g). The requirements governing parental consent for initial evaluations are found in 34 CFR §300.300(a).

Question A-1: What if a student whose IEP has not been subject to a timely annual review, but who continues to receive special education and related services under that IEP, transfers to a new public agency in the same State? Is the new public agency required to provide a free appropriate public education (FAPE) from the time the student arrives?

Answer: If a child with a disability who received special education and related services pursuant to an IEP in a previous public agency (even if that public agency failed to meet the annual review requirements in 34 CFR §300.324(b)(1)(i)) transfers to a new public agency in the same State and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must, pursuant to 34 CFR §300.323(e), provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either (1) adopts the child's IEP from the previous public agency; or (2) develops, adopts, and implements a new IEP that meets the applicable requirements in 34 CFR §§300.320 through 300.324.

Question A-2: What options are available when an out-of-state transfer student cannot provide a copy of his/her IEP, and the parent identifies the "comparable" services that the student should receive?

Answer: The regulations in 34 CFR §300.323(g) require that, to facilitate the transition for a child described in 34 CFR §300.323(e) and (f)--

(1) the new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR §99.31(a)(2); and

(2) the previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

After taking reasonable steps to obtain the child's records from the public agency in which the child was previously enrolled, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, if the new public agency is not able to obtain the IEP from the previous public agency or from the parent, the new public agency is not required to provide special education and related services to the child pursuant to 34 CFR §300.323(f).

Even if the parent is unable to provide the child's IEP from the previous public agency, if the new public agency decides that an evaluation is necessary because it has reason to suspect that the child has a disability, nothing in the IDEA or its implementing regulations would prevent the new public agency from providing special education services to the child while the evaluation is pending, subject to an agreement between the parent and the new public agency. However, if the child receives special education services while the evaluation is pending, the new public agency still must ensure that the child's evaluation, which would be considered an initial evaluation, is conducted within 60 days of receiving parental consent for the evaluation or within the State-established timeframe within which the evaluation must be conducted, in accordance with 34 CFR §300.301(c)(1). Further, under 34 CFR §300.306(c)(1)-(2), if the new public agency conducts an eligibility determination and concludes that the child has a disability under 34 CFR §300.8 and needs special education and related services, the new public agency still must develop and implement an IEP for the child in accordance with applicable requirements in 34 CFR §§300.320 through 300.324 even though the child is already receiving special education services from the new public agency.

If there is a dispute between the parent and the new public agency regarding whether an evaluation is necessary or the special education and related services that are needed to provide FAPE to the child, the dispute could be resolved through the mediation procedures in 34 CFR §300.506 or, as appropriate, the due process procedures in 34 CFR §§300.507 through 300.516. If a due process complaint requesting a due process hearing is filed, the public agency would treat the child as a general education student while the due process complaint is pending. 71 FR 46540, 46682 (Aug. 14, 2006).

Question A-3: Is it permissible for a public agency to require that a student with a disability who transfers from another State with a current IEP that is provided to the new public agency remain at home without receiving special education and related services until a new IEP is developed by the new public agency?

Answer: No. Under 34 CFR §300.323(f), if a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency (1) conducts an evaluation pursuant to 34 CFR §§300.304 through 300.306 (if determined to be necessary by the new public agency); and (2) develops and implements a new IEP, if appropriate, that meets the applicable requirements in 34 CFR §§300.320 through 300.324.

Thus, the new public agency must provide FAPE to the child with a disability when the child enrolls in the new school in the public agency in the new State, and may not deny special education and related services to the child pending the development of a new IEP.

Question A-4: What is the timeline for a new public agency to adopt an IEP from a previous public agency or to develop and implement a new IEP?

Answer: Neither Part B of the IDEA nor the regulations implementing Part B of the IDEA establish timelines for the new public agency to adopt the child's IEP from the previous public agency or to develop and implement a new IEP. However, consistent with 34 CFR §300.323(e) and (f), the new public agency must take these steps within a reasonable period of time to avoid any undue interruption in the provision of required special education and related services.

Question A-5: What happens if a child with a disability who has an IEP in effect transfers to a new public agency or LEA in a different State and the parent refuses to give consent for a new evaluation?

Answer: Under 34 CFR §300.323(f), if a child with a disability (who has an IEP in effect) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency (1) conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and (2) develops and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324. Nothing in 34 CFR §300.323(f) would preclude the new public

agency in the new State from adopting the IEP developed for the child by the previous public agency in another State. If the new public agency determines that it is necessary to conduct a new evaluation, that evaluation would be considered an initial evaluation because the purpose of that evaluation is to determine whether the child qualifies as a child with a disability and to determine the educational needs of the child. 71 FR 46540, 46682 (Aug 14, 2006). The public agency must obtain parental consent for such an evaluation in accordance with 34 CFR §300.300(a). However, 34 CFR §300.300(a)(3)(i) provides that if a parent does not provide consent for an initial evaluation, or fails to respond to a request to provide consent, the new public agency may, but is not required to, pursue the initial evaluation by utilizing the Act's consent override procedures, if permissible under State law. The Act's consent override procedures are the procedural safeguards in subpart E of 34 CFR Part 300 and include the mediation procedures under 34 CFR §300.506 or the due process procedures under 34 CFR §§300.507 through 300.516.

Because the child's evaluation in this situation is considered an initial evaluation, and not a reevaluation, the stay-put provision in 34 CFR §300.518(a) does not apply. The new public agency would treat the student as a general education student and would not be required to provide the child with comparable services if a due process complaint is initiated to resolve the dispute over whether the evaluation should be conducted. 71 FR 46682. Also, 34 CFR §300.300(a)(3)(ii) is clear that the public agency does not violate its obligation under 34 CFR §§300.111 and 300.301 through 300.311 (to identify, locate, and evaluate a child suspected of having a disability and needing special education and related services) if it declines to pursue the evaluation. Similarly, if the parent does not provide consent for the new evaluation and the new public agency does not seek to override the parental refusal to consent to the new evaluation, the new public agency would treat the student as a general education student.

