



Technical Assistance Bulletin

Division of Early Intervention and Special Education Services | Bulletin # 23-01



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Students Transferring Between Maryland Local Education Agencies and Into Maryland Schools from Out of State

Purpose

This technical assistance bulletin provides additional support and guidance for Individualized Education Program (IEP) teams to address the needs of students with IEPs transferring between school systems within the State of Maryland and jurisdictions outside of the State. This document is designed to serve as a guide to addressing the compliance requirements, as well as the practical considerations involved in ensuring that transferring students receive a free appropriate public education (FAPE) during their transition into Maryland.

Legal Framework

Students Transferring Within the State

Students with an IEP that was in effect in a local education agency (LEA) within the State of Maryland who enroll in another Maryland public agency must be provided with a free appropriate public education (FAPE), in consultation with the parent, including services comparable to what is on their existing IEP, until the receiving LEA either adopts the IEP from the previous LEA, or develops, adopts, and implements a new IEP for the student. *34 CFR §300.323(e)*.

If the student has a current IEP for which an annual review meeting has not been convened for over a year, the IEP team must consult with the family about the supports that will be provided for the student until the team determines the most appropriate way to proceed. The IEP team will consider whether updated assessments are needed, whether there is sufficient information to adopt the existing IEP, or whether to develop, adopt, and implement a new IEP for the student. If assessments are needed, they may need to be expedited, as appropriate, to ensure that an IEP is in place for the student prior to the start of the school year. *34 CFR §300.323(a)*.

Students Transferring from Outside of the State

A student moving into Maryland with an IEP in effect from another state must be provided with a FAPE, in consultation with the parent, including services comparable to what is on their IEP, until the new LEA determines whether it is necessary to conduct an evaluation to determine the student's eligibility in Maryland, and if the student continues to be eligible, develops, adopts, and implements a new IEP for the student. *34 CFR §§ 300.320 - .324*. If the team determines that assessments are necessary to determine the student's eligibility within the state of Maryland, it is considered an initial assessment.

If the student has a current IEP for which an annual review meeting has not been convened for over a year, the IEP team must consult with the family about the supports that will be provided until the team determines the most appropriate way to proceed. The IEP team will consider whether updated assessments are needed, or whether

there is sufficient information to develop, adopt, and implement a new IEP for the student. If assessments are needed, they should be expedited, as appropriate, to ensure that an IEP is in place for the student prior to the start of the school year. *34 CFR §300.323(a)*.

Parental Consent for the Initiation of Services on the New IEP

Parental consent is only required at the first time of initiation of special education services in Maryland. Additional consent for services is not required. Parental consent to the initial provision of special education and related services continues to be in effect when a student transfers between local education agencies, regardless of whether the transfer is in or out of state, unless the new LEA determines that it is necessary to conduct an initial evaluation to determine eligibility in the new jurisdiction. Accordingly, it is an individual case by case determination whether or not parental consent is needed to initiate services when the Maryland IEP is drafted. In cases where no initial evaluation was conducted, no parental consent is required to begin implementation of the Maryland IEP. *See Letter to Champagne:*

<https://www.google.com/url?q=https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2008-4/champagne111708consent4q2008.pdf&sa=D&source=docs&ust=1681923173067761&usg=AOvVaw0YPxH-1Fmeug42TCBlKrPE>.

Students Transferring in Mid-Evaluation Process

Students may move in and out of the LEA when they are in the middle of the evaluation process. It is critical that the receiving LEA be informed of the fact that the evaluation process has been started (either initial or re-evaluation), as well as where in the process the student is; what assessments, if any, have been started and completed; and the anticipated timeline. Federal permit an extension of time if a student transfers between LEAs while they are mid process. The parent must agree to the extended date and be notified of the extension in writing. The completion of the evaluation process should be expedited even if there is an agreement to extend. *34 CFR §300.301(d)(2) and (e)*.

Students Transferring During the Summer

It is essential that students transferring into new LEAs during the summer have an IEP in place prior to the start of the school year if at all feasible. There must be a determination of whether additional assessments are needed to determine eligibility and/or present levels of academic achievement and functional performance, or student needs, to develop, adopt and implement a new IEP prior to the start of the school year. If assessments are warranted, they may need to be expedited to ensure the development of an appropriate IEP prior to the start of the school year, if at all possible. If the parent requests that the new LEA convene the IEP team prior to the start of the school year and the LEA refuses to do so, the school must provide prior written notice for the parent of the refusal. The prior written notice must include, among other content, an explanation of why the school team determined that conducting the meeting was not necessary to ensure the provision of FAPE to the student. *34 CFR §300.503. 34 CFR §300.323(a)*. *See Analysis of Comments and Changes accompanying the final IDEA Part B regulations.*

Transmittal of Student Records

The new LEA in which the child enrolls must 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 LEA in which the child was enrolled. The new school in which the child enrolls shall request the child's records as soon as possible, but in no case more than 3 business days of enrollment. The previous school in which the child was enrolled shall transfer records within 3 business days of receiving a formal request of records from the new school. Parental consent to transfer records between public schools is not required. All efforts to obtain an incoming student's record must be documented and retained in the student's file. Documentation must also be retained when a student's record is sent to the new jurisdiction. *COMAR 13A.08.02.19*.

Scenarios

Scenario 1: Michael Hill was withdrawn from Queen Anne’s County Public Schools and placed home instruction in March 2021. His last IEP was dated March 13, 2021. His last re-evaluation when testing was completed was also March 13, 2021. Michael’s family moved to Harford County in June 2022. His parents enrolled him in his neighborhood middle school in July 2022.

At the time of his withdrawal, Michael was a sixth-grade student eligible for special education and related services as a student with a specific learning disability. His IEP had goals in decoding, spelling, and expressive language. Michael had received 5 hours weekly of specially designed instruction and 30 minutes of speech/language services weekly. Michael is now in the eighth grade.

The Harford County middle school IEP team scheduled a meeting during the second week of July. They contacted the parent to obtain information and work samples from Michael’s home schooling. The Harford team was able to contact the staff at the Queen Anne’s school and get some information, but it was not current enough to develop an IEP. The team was able to review the most recent assessments, confirm eligibility, and determined that additional information was needed to develop the IEP. The team recommended that informal and formal academic assessments be completed. The speech/language pathologist also recommended that formal assessments be completed. The parents agreed to the assessments being conducted and provided written consent to allow Harford County to conduct the reevaluation.

The previous IEP was reviewed. Although it was no longer in effect, the parents and team agreed that Michael would continue to need supports as he was eligible for services. The team, including the parents, agreed to provide reading intervention and support in English/Language Arts, similar to what he was receiving in Queen Annes County on his previous IEP, in case the updated assessments and new IEP were not completed prior to the start of the school year. The team agreed that the grade level goals and objectives on the existing IEP would not be implemented as they were no longer appropriate. The goals relating to decoding would be worked on until the team had more current information. The parents agreed to wait until the speech/language assessment was completed prior to services being provided.

The recommended assessments were completed by August 10, 2022. Because the student had already been determined eligible for special education and related services, the team was able to combine the evaluation review meeting with the IEP development meeting. The completed assessments and a new IEP was drafted and sent to the parents on August 18, 2022. The IEP meeting to review both the assessments and draft IEP was held on August 25, 2022. Michael’s IEP was in place before the start of the new school year.

Scenario 2: Joann Hutt is eligible for special education services as a student with autism. She attended a separate special education day school in a different state, where she received 30 hours of specialized instruction weekly outside of the general education setting, one hour of speech, and one hour of occupational therapy weekly, also outside of the general education setting. Joann is now in 9th grade. Transition services begin at 16 in the state Joann was living in.

Joann moved to Montgomery County Maryland in March 2023, and is turning 15 in May. Joann’s annual review was completed in January 2023. Her most current re-evaluation was completed in September 2021, where academic, psychological, communication, and occupational therapy assessments were completed and reviewed by the IEP team.

Joann’s parents enrolled her in her neighborhood high school, as directed. Within two days, the IEP team convened to discuss the implementation of comparable services for Joann. The team discussed transition services in Maryland, the possibility of community-based instruction, and the implementation of Joann’s IEP in a program co-located in a comprehensive school. Joann’s parents were concerned as she had only ever received services in a separate special education day school. They did not agree to community-based instruction on a regular basis, but did agree to occasional community field trips.

The Montgomery County team were able to provide comparable services as were on the out of state IEP in the program co-located in the comprehensive school. The student did not participate in community-based instruction.

The parents were in agreement with the comparable services but were concerned about the location of those services.

After providing the parents with the required notice, the IEP team convened to determine Joann's eligibility in Maryland and develop the Maryland IEP. The team reviewed the most recent assessment information, as well as Joann's assessments over time, her IEPs, information provided by the family, new information from her teachers, and determined that nothing else was needed to confirm Joann's eligibility for special education and related services in Maryland. The team found Joann eligible as a student with autism. The parents agreed. The team proposed a draft IEP, which included transition services and participation in community-based instruction. In addition, the team recommended continued placement in the co-located program, with one period of inclusion during a dance class. The parents did not agree to the services, the community-based instruction, or the LRE recommendations. They stated that they would not provide consent to the implementation of the IEP. The LEA ensured that the parents were provided with their procedural safeguards and informed them that they did not need to sign the IEP, but implementation would begin 5 days after the parents received their prior written notice.

Frequently Asked Questions

Q: If an LEA receives an IEP that has not been implemented within that academic school year, is the LEA required to provide comparable services?

A: If an IEP had not been implemented within that academic year, the receiving LEA would not be required to provide services comparable to the last approved IEP. The new LEA should consult with the family to determine what supports may be provided to the student until an IEP team can be held to determine the most appropriate way to proceed. The IEP team should consider whether updated assessments are needed, or whether there is sufficient information to develop, adopt, and implement a new IEP for the student.

Q: If a student moves into MD from another and the IEP team determines that an initial evaluation is not necessary before developing an IEP, would this be considered an annual IEP and not an initial IEP requiring parent consent?

A: If an IEP team determined that an initial evaluation was not required in order to develop, adopt, and implement a new IEP in MD, the new IEP would be considered an annual IEP, not an initial IEP. No parent consent would be required in order to begin implementing the new IEP in MD.

Q: If a student moves into MD from out of state where an initial evaluation had been started in the previous state and the new LEA cannot complete the evaluation within the required timeline, would the new LEA be considered out of compliance for State Performance Plan Indicators requiring timeline compliance if the parent does not agree to an extension of the evaluation timeline?

A: If the student moves to a new jurisdiction mid-evaluation process, and the parent does not agree to an extension of the timeline, the new LEA would be considered out of compliance for Indicator 11, in accordance with *34 CFR §300.301(d)(2) and (e)*.

Q: If a student moves into Maryland from another jurisdiction mid-evaluation process and the parents agree to extend the timeline to complete the initial evaluation, how long does the new LEA have to complete the evaluation process?

A. There is no set timeline, only that the LEA is required to ensure "prompt completion" of the evaluation and the parent and new LEA must agree on a specific timeframe in writing for the evaluation to be completed, in accordance with *34 CFR§ 300.301(d)(2) and (e)*. Consequently, the evaluation process should be expedited and agreed upon by the parent.

If this were a re-evaluation process that started in the student's prior LEA, and the previous IEP team determined there was a need for additional information but were unable to complete the process, this would not be considered an initial evaluation, but a continuation of the re-evaluation.

Q. If the Maryland LEA can provide comparable services in a less restrictive environment than the student's previous out-of-state jurisdiction, is that permissible?

A. Preliminarily, comparable services are determined in consultation with the parent/guardian, so if there is agreement to any changes to the existing IEP, those should be documented. The focus should be on the services, not necessarily the location. If comparable services can be provided in an LRE, and there are no changes to the student's existing IEP, courts have held that to be permissible.

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