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## **Q & A: Out of State Transfers and the Provision of Special Education and Related Services**

The Minnesota Department of Education (MDE) Division of Compliance and Assistance has developed this document to address questions raised by parents and school districts regarding out-of-state transfers and the provision of special education and related services.

**Question 1:** When a student with an IEP transfers from another state, what is Minnesota's obligation for providing special education and related services?

**Answer:** As found in 34 C.F.R. § 300.323, at the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an Individual Education Plan (IEP), as defined in § 300.320. If a child with a disability who had an IEP that was in effect in a previous public agency in another state, who then transfers to a public agency in a new state and enrolls in a new school during the summer; the district will need to have a means for determining whether children who moved into the State during the summer are children with disabilities and for ensuring that an IEP is in effect at the beginning of the school year.

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 a Free Appropriate Public Education (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, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§ 300.320 through 300.324.

Because the purpose of the provision for a transfer during the school year is to avoid a disruption in services; it is to be done "in consultation with the parents" and is based on an existing IEP. The continuing provision of FAPE by the Minnesota district is not a proposal or refusal to a change in services, placement, identification, or provision of FAPE and accordingly does not require prior written notice and a 14 day notice period. Minn.R. 3525.3600. The comments and discussion to the federal regulations state that if there is a dispute between the parent and the public agency regarding what constitutes comparable services, the dispute could be resolved through mediation procedures or a due process hearing.

Question 2: When a student with an IEP transfers from another state, does a Minnesota school district have the right or obligation to discontinue the provision of services and place the student in general education when the parent continues to disagree with the district's initial IEP proposal?

Answer: When a child with an IEP transfers from another state during the school year, the district, in consultation with the parents, is to provide the child with FAPE, including comparable services to those in the child's IEP from the previous public agency. However, this obligation is of limited duration.

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another state, the Local Educational Agency (LEA) shall provide such child with a FAPE including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the LEA conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law. 20 USC § 1414(d)(2)(c).

(f) IEPs for children who transfer from another state. 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 §§ 300.304 through 300.306 (if determined to be necessary by the new public agency); and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§ 300.320 through 300.324.

34 C.F.R. § 300.323(f).

As noted above, the district's obligation to provide FAPE, including services comparable to those described in the child's IEP from the previous public agency, may end once the district has conducted an evaluation and developed a new IEP. The comments to the federal regulations make it clear that an evaluation is considered an initial evaluation and not a reevaluation and stay put provisions would not apply in case of parental disagreement *See* 71 Fed. Reg. 46682 (2006). Accordingly a resulting IEP proposed by the district is a proposal for the initial provision of special education and related services and a parent must provide consent for the initial provision of services as follows:

(b) Parental consent for services. (1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(3) If the parent of a child fails to respond or refuses to consent to services under paragraph (b)(1) of this section, the public agency may not use the procedures in subpart E of this part (including the mediation procedures under Sec. 300.506 or the due process procedures under Sec. Sec. 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child.

(4) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency-- (i) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and (ii) Is not required to convene an IEP team meeting or develop an IEP under Sec. Sec. 300.320 and 300.324 for the child for the special education and related services for which the public agency requests such consent. 34 C.F.R. § 300.300(b).

If a district conducts an initial evaluation and proposes an IEP consistent with federal and state law and the parent consents to the proposed IEP, the district's obligation to provide comparable services ends with the implementation of the new IEP. C.F.R. § 300.323(f). If a district conducts an initial evaluation and proposes an IEP consistent with federal and state law and the parent rejects the proposed IEP, the district may not use due process procedures to obtain agreement to the provision of services. 34 C.F.R. § 300.300(b). However, the parent retains their due process rights to challenge the appropriateness of the proposed IEP or may consent to the initial provision of services at a later date. 34 C.F.R. § 300.300(b). Additionally, upon completion of the initial evaluation and an initial eligibility determination under Minnesota criteria there is no stay-put provision. *See* 71 Fed. Reg. 46682 (2006). Because there is no stay-put IEP and the parent has rejected the initial provision of services, the District must stop providing special education and related services to the child and is not considered in violation of the requirement to make available FAPE to the child for the failure to provide the child with special education and related services that were proposed for the child.

Authority: 20 USC § 1414(d)(2)(C); C.F.R. § 300.323(f); 34 C.F.R. § 300.300(b); 71 Fed. Reg. 46682 (2006)