

Q & A: IEPs for Transfer Students

The IDEA regulations now include the requirement that school districts implement the IEP that was in effect in another public agency for both in-state and out-of-state transfer students. Previously, under Pennsylvania law, school districts were only obligated to implement the IEPs of in-state transfer students. Out-of-state transfer students were treated as new enrollees and were to be placed in regular education until the student was evaluated and a new program and placement were agreed upon. Following is a series of questions and answers regarding the procedures that should be followed when a student transfers into your school district.

What services is the District obligated to provide when a student with an IEP transfers into the District?

For in-state transfer students who enroll in another public school district in Pennsylvania, the new district must provide services comparable to those described in the child's IEP from the previous public agency until such time as the District adopts the student's previous IEP or develops a new IEP for the student. For out-of-state transfer students, the new District still must provide services comparable to those described in the child's IEP from the previous public agency, but until such time as the District completes an evaluation of the student and develops a new IEP for the student.

When a student moves into a Pennsylvania school district with an out-of-state IEP, should the District issue a Permission to Evaluate or a Permission to Reevaluate?

Although the IDEA now requires that a school districts implement the out-of-state IEP, the evaluation of the relocating child is deemed an initial evaluation. Therefore, a school district should issue a Permission to Evaluate. If the multidisciplinary team determines that the child is eligible, the IEP created following the evaluation would be an initial IEP, which would require parental consent to implement. Without parental consent, special education services would terminate after the issuance of the new IEP and NOREP, and the district would not have the option of pursuing due process to force the child into special education services.

If, on the other hand, the multidisciplinary team determines that the child is not eligible, the district would issue a NOREP of non-eligibility. Should the parents challenge the non-eligibility determination through due process, the district would have to continue to implement the out-of-state IEP pending completion of any ensuing due process hearings and appeals.

Should the District issue a NOREP indicating that it is implementing the out-of-state IEP while the evaluation is being conducted?

No. Remember that the "R" in "NOREP" stands for "Recommended," and the district is not recommending the program and placement that it is inheriting from the out-of-state school district. The Pennsylvania district is required to implement it by operation of law, not by choice. The District should, however, convene an IEP team meeting to discuss with the parents how the District intends to implement the IEP in the settings that are available. The District should then describe what was decided upon in a follow-up letter to the parents.

Is there a time frame within which services to transfer students must commence?

There is no specific time frame in the law for implementation of an IEP for a transfer student whether from out-of-state or in-state. Accordingly, a reasonableness standard would apply. The Pennsylvania Department of Education does recommend that a newly enrolled student be in attendance within five business days of enrollment, but this recommendation is for the general population and does not necessarily contemplate placement into a specialized program. We suggest that 10 days, which is the time period given for a parent to approve a NOREP, would be a reasonable timeframe to apply for the implementation of a transfer student's IEP.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.