



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

November 10, 2022

OSEP Policy Support 22-02

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 and youth experiencing frequent moves into new school districts, such as military-connected children, migratory children, children who are homeless, and children in the foster care system. While these children often possess remarkable resilience, they also experience formidable challenges as they cope with frequent educational transitions. Additionally, highly mobile children who are not fully oriented into new and varying school expectations may have difficulty communicating their needs or concerns within these new contexts. These challenges may be especially daunting for children with disabilities and their families and have been compounded by the mental health, academic, and other impacts of the COVID-19 pandemic. The purpose of this letter is to address concerns expressed by stakeholders regarding the unique educational needs of highly mobile children with disabilities<sup>1</sup> under the Individuals with Disabilities Education Act (IDEA), provide an updated list of resources to support them, and seek your assistance in improving the educational stability of, and post-school outcomes for, these highly mobile children.

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, families, and others 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. It is important for all school administrators and 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. This includes affording all of the IDEA's rights and protections to eligible children and their parents when the children change school districts. Additionally, in the case of highly mobile children with disabilities who are parentally-placed in private schools and who are not entitled to FAPE,

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<sup>1</sup> This letter updates guidance and resources to States and school districts originally set forth in the Department's July 19, 2013 [Dear Colleague letter on Education for Highly Mobile Children](#). This update 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. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

the equitable services provisions under IDEA apply (34 C.F.R. §§ 300.129-300.144). 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, and the provision of comparable services, which could include extended school year services, when a highly mobile child transfers into a new school district.<sup>2</sup>

In a [February 9, 2022, letter to chief State school officers regarding military-connected students](#) and their families, Secretary Cardona described four critical and beneficial practices for States to consider implementing to serve all highly mobile children:

- Identify ways to make State and district policies and procedures consistent with guidelines and rules set forth under the [Military Interstate Children’s Compact Commission \(MIC3\) Compact](#);
- Honor and respect the previous academic standing and accomplishments of highly mobile children in their new districts;
- Involve district and school leaders, teachers, school counselors, social workers, coaches, school nurses, and administrators at all levels in efforts to better address the needs of highly mobile children; and
- Provide professional development opportunities to educators, related service providers, and staff on how to recognize and respond to the needs of highly mobile children.

Thus, these overarching practices provide a framework for designing educational systems responsive to the needs of highly mobile children with disabilities.

**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 need special education and related services, including highly mobile children, must be evaluated in a timely manner and without undue delay. 34 C.F.R. §§ 300.101, 300.111, and 300.131 Generally, IDEA requires completion of initial evaluations within 60 days of receiving parental consent for

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<sup>2</sup> Other Federal laws also protect highly mobile children with disabilities, including, of note, the following two laws that prohibit disability discrimination against them: 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’s enforcement is available on OCR’s website at [www.ed.gov/ocr](http://www.ed.gov/ocr).

the evaluation or within the State-established time frame. 34 C.F.R. §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. The relevant time frame continues to apply unless: 1) the new school district is making sufficient progress to ensure prompt completion of the evaluation; and 2) the parent and the new school district agree to a specific time when the evaluation will be completed. 34 C.F.R. § 300.301(d)(2) and (e).

Section 300.323(g) of the regulations implementing IDEA requires public agencies to promptly exchange relevant records when a child changes school districts, subject to the Family Educational Rights and Privacy Act (FERPA). FERPA (20 U.S.C. § 1232g; 34 C.F.R. Part 99) 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) to permit 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 to permit the disclosures of personally identifiable information contained in education records, unless a specific exception applies. *See* 34 C.F.R. § 300.622. The exception to the prior consent requirement that would be relevant to the disclosure of education records of highly mobile students is 34 C.F.R. § 99.31(a)(2), which permits, subject to conditions set forth in 34 C.F.R. § 99.34<sup>3</sup>, the disclosure of such 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. Relevant records include existing evaluation data, consistent with 34 C.F.R. § 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 multi-tiered system of support (MTSS) as a framework to address the needs of students, including struggling learners and students with disabilities. MTSS integrates screening and assessment and organizes differentiated intervention practices within a multilevel instructional and behavioral framework. MTSS is considered to be an effective

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<sup>3</sup> A school or school district that discloses education records under this provision must: (1) make a reasonable attempt to notify the parent or eligible student of the disclosure at their last known address, unless (a) the disclosure is initiated by the parent or eligible student or (b) the school's or school district's annual notification of rights under FERPA includes a notice that it forwards education records to other educational agencies or institutions that have requested the records and in which the student seeks or intends to enroll or is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer; (2) give the parent or eligible student, upon request, a copy of the disclosed education record(s); and (3) give the parent or eligible student, upon request, an opportunity for a hearing under subpart C of 34 C.F.R. Part 99.

framework for organizing intervention practices. However, local implementation of MTSS must not unnecessarily delay the initial evaluation of highly mobile children. 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 (34 C.F.R. § 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 MTSS or response to intervention (RTI) process is pending.

Rather, the school district must adhere to the relevant evaluation time frame described in 34 C.F.R. § 300.301, unless extended by mutual written agreement of the school district and the child's parents. *See* 34 C.F.R. § 300.309(c).

**Analysis:** Highly mobile children are more likely to experience recurring educational disruptions and challenges, and the special education and related services available under IDEA are critical to helping eligible highly mobile children with disabilities meet these educational challenges. Therefore, we strongly encourage school districts to complete their evaluations of highly mobile children within expedited time frames (*e.g.*, within 30 days to the extent possible), consistent with each highly mobile child's individual needs, whenever possible.

It also has been brought to our attention that when some highly mobile children change school districts after the previous school district began, but had not yet completed, the evaluation, the new school district postpones the evaluation until the new school district's MTSS 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 their MTSS process. Although the new school district may choose to provide interventions as part of its MTSS framework while it is in the process of completing the evaluation, it would be inconsistent with the evaluation provisions in 34 C.F.R. §§ 300.301 through 300.311 for a school district to delay completing an initial evaluation because a child has not participated in an evaluation process in the new school district. For more information on the implementation of RTI as an evaluation process, *see* Office of Special Education Programs ([OSEP Memorandum 11-07 on Response to Intervention \(Jan. 21, 2011\)](#)).

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 C.F.R. § 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. 34 C.F.R. § 300.323(e). 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 C.F.R. § 300.323(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.<sup>4</sup>

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, in accordance with the child’s IEP. 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 C.F.R. § 300.106.

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<sup>4</sup> The Department’s OCR has previously interpreted Section 504 to require the following: “When a student with a disability transfers to a new school district, the receiving district has a responsibility to ensure it meets the student’s disability-based needs. In determining how to meet those needs, the receiving district must draw upon information from a variety of sources, which would include past evaluations and past Section 504 plans and IEPs. If the student has a current Section 504 plan from the former school and, after reviewing the plan, the receiving school believes the plan provides FAPE, there is nothing in Section 504 that prohibits the new school from adopting the plan for the student. In addition, if upon review of the plan from the former school, the receiving school determines additional evaluation is necessary or that the plan needs to be revised, there is nothing in Section 504 that prohibits the new school from implementing the current plan while it conducts the evaluation and develops a new plan.” Office for Civil Rights, [Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools](#), p.26 (December 2016) (footnotes omitted).

In the case of highly mobile private school children with disabilities who are parentally-placed in private schools, LEAs may consider including this topic for discussion as part of the consultation process regarding the provision of equitable services.

**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.<sup>5</sup> Consistent with this interpretation, the new school district generally must provide services that are comparable to the required ESY services to a transfer student whose IEP from the previous school district contains those services. The new school district may not refuse to provide ESY services to that child merely because the services would be provided during the summer.<sup>6</sup> While the determination of comparable services is made on an individual basis, the new school district’s IEP Team may not arbitrarily, or due to limited availability, 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 C.F.R. § 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 C.F.R. § 300.323(f).

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<sup>5</sup> 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).

<sup>6</sup> Id. at 46582.

## Conclusion

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 military-connected children with disabilities and their families, migratory children with disabilities and their families, homeless children with disabilities and their families, and children with disabilities in foster care.

For additional information you also may consult <https://sites.ed.gov/idea/> 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](mailto:highlymobile@ed.gov) or write to us at the following address: U.S. Department of Education, 550 12th Street SW, PCP Room 5138, 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,

/s/

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Katherine Neas  
Deputy Assistant Secretary  
Office of Special Education and  
Rehabilitative Services

/s/

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Valerie C. Williams  
Director  
Office of Special Education Programs

## 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. (2022). [\*Secretary's letter regarding military-connected students and families \(MIC3\)\*](#).
- U.S. Department of Education. (2022). [\*School Climate and Student Discipline Resources\*](#).
- U.S. Department of Education. (2022). [\*Fact Sheet: Providing Students with Disabilities Free Appropriate Public Education During the COVID-19 Pandemic and Addressing the Need for Compensatory Services Under Section 504\*](#).
- U.S. Department of Education. (2022). [\*Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools\*](#).
- U.S. Department of Education. (2022). [\*Supporting Child and Student Social, Emotional, Behavioral and Mental Health\*](#).
- U.S. Department of Education (2022). [\*Advancing Digital Equity for All\*](#).
- U.S. Department of Education. (2021). *Return to School Roadmap under IDEA: Development and Implementation of Individualized Education Programs—*[English](#) | [Español](#).
- U.S. Department of Education. (2021). *Return to School Roadmap under IDEA: Child Find Under Part B of the Individuals with Disabilities Education Act—*[English](#) | [Español](#).
- U.S. Department of Education. (2018). [\*Education for Homeless Children and Youths Program Non-Regulatory Guidance, Title VII-B of the McKinney-Vento Homeless Assistance Act, as amended by the Every Student Succeeds Act\*](#).
- U.S. Department of Education. (2017). [\*Q&A on Endrew F. v. Douglas County School District Case\*](#).
- U.S. Department of Education. (2017). [\*Education of Migratory Children under Title I, Part C of the Elementary and Secondary Education Act of 1965- Non-Regulatory Guidance\*](#).

- U.S. Department of Education and U.S. Department of Health and Human Services. (2016). Joint [\*Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care.\*](#)
- U.S. Department of Education and U.S. Department of Health and Human Services. (2016). Joint [\*Dear Colleague Letter on Foster Care Guidance.\*](#)
- U.S. Department of Education and U.S. Department of Health and Human Services. (2016). Joint [\*Dear Colleague Letter on Implementation of Educational Stability Requirements.\*](#)
- U.S. Department of Education. (2016). [\*Dear Colleague Letter on the Inclusion of Behavioral Supports.\*](#)
- U.S. Department of Education. (2016). [\*OSEP Memo 16-07 on Response to Intervention \(RTI\) and Preschool Services.\*](#)
- U.S. Department of Education. (2016). [\*Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools\*](#)
- U.S. Department of Education. (2015). [\*Dear Colleague Letter on Free and Appropriate Public Education \(FAPE\).\*](#)
- U.S. Department of Education. (2013). [\*Questions and Answers on Special Education and Homelessness.\*](#)
- U.S. Department of Education. (2011). [\*Questions and Answers On Individualized Education Programs \(IEP's\), Evaluations, and Reevaluations.\*](#)
- U.S. Department of Education. (2011). [\*OSEP 11-07 Response to Intervention \(RTI\) Memo – January 21, 2011.\*](#)
- U.S. Department of Education. (2007). [\*Questions and Answers on Response to Intervention \(RTI\) and Early Intervening Services \(EIS\).\*](#)
- U.S. Department of Education, [Office of Elementary and Secondary Education, Office of Safe and Supportive Schools](#)
- U.S. Department of Education, [Office of Elementary and Secondary Education, Education for Homeless Children and Youth](#)
- U.S. Department of Education, [Office of Elementary and Secondary Education, Office of School Support and Accountability, Neglected, Delinquent, or At-Risk – Title I, Part D](#)
- U.S. Department of Education, [Office of Elementary and Secondary Education, Office of School Support and Accountability, Students in Foster Care](#)

- U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, [Title I, Part C- Migrant Education Program](#).

***Department of Education Technical Assistance Centers (OESE)***

- [National Center on Safe Supportive Learning Environments](#)
- [The Technical Assistance Center on Positive Behavioral Interventions and Supports](#)
- [Equity Assistance Centers](#)
- [Comprehensive Center Network](#)
- [The National Center for Homeless Education](#)

***Department of Education Technical Assistance Centers (OSEP)***

- [National Center for Pyramid Model Innovations](#)
- [Early Childhood Technical Assistance \(ECTA\) Center](#)
- [Center on Positive Behavioral Interventions & Supports](#)

***OSEP's IDEAs that Work***

- [Tool Kit on Teaching and Assessing Students with Disabilities](#)
- [Tool Kit on Teaching and Assessing Students with Disabilities – Parent Materials](#)
- [Tool Kit on Universal Design for Learning \(UDL\)](#)

***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/>
- U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, Child Welfare Information Gateway, [Fostering Connections to Success and Increasing Adoptions Act of 2008](#)

**Other Helpful Resources**

***Military Connected Families with Children with Disabilities***

- [Military Interstate Children's Compact Commission \(MIC3\)](#)
- [Military Child Education Coalition](#)
- [Specialized Training of Military Parents \(STOMP\)](#)
- [Center for Parent Information and Resources – military](#)

- [Branch Military Parent Technical Assistance Center \(mptac\)](#)

***Migrant Students with Disabilities***

- [Migrant Student Records Exchange Initiative](#)

***Parent Support***

- [Parent Training and Information \(PTI\) Center](#)

***Multi-Tiered Instructional System***

- [Center on Multi-Tiered System of Support](#)
- [National Center for Pyramid Model Innovations](#)