



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

February 21, 2019

Lawrence Siegel, Esq.
101 Lucas Valley Road
Suite 265
San Rafael, California 94903

Dear Mr. Siegel:

This letter is in response to your electronic mail (email) correspondence to Lisa Pagano in the Office of Special Education Programs. You asked a series of questions regarding a child with a disability who transfers to a new local educational agency (LEA) during the summer. Specifically, you ask whether the new LEA is required to hold an individualized education program (IEP) Team meeting prior to the start of the school year in the following scenario —

- A child goes to a new LEA and is also moving to a new educational level, e.g., K-8 to high school where the programs/options are likely entirely different from the child's previous program and IEP. In short, in many, if not all cases, the high school LEA district cannot implement the old IEP.
- The new LEA refuses to hold an IEP or informal discussions before the new year starts, which means the new IEP/program will not be offered until sometime after school starts.

We note that section 607(d) of the Individuals with Disabilities Education Act (IDEA) prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. This response represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented, and does not establish a policy or rule that would apply in all circumstances.

IDEA includes specific requirements for IEPs for children who transfer public agencies within the same school year. If a child with a disability, who had an IEP that was in effect in a previous public agency in the same State, 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 provide a free appropriate public education to the child. This includes providing 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 §§ 300.320 through 300.324. 20 U.S.C. § 1414(d)(2)(C); 34 C.F.R. § 300.323(f).

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

This provision does not specifically address a situation where a child with a disability transfers to a new public agency during the summer. However, IDEA also requires that at the beginning of each school year, each LEA, State educational agency, or other State agency, must have in effect, for each child with a disability in the agency's jurisdiction, an IEP. 20 U.S.C. § 1414(d)(2)(A) and 34 C.F.R. § 300.323. Therefore, public agencies must ensure that an IEP is in effect at the beginning of the school year for children who move into a new public agency during the summer. How a public agency meets this requirement is a matter to be decided by each individual new public agency.

If the parent requests that the new public agency convene the IEP Team prior to the start of the school year and the public agency refuses to do so, the agency must provide written notice to the parent of the refusal. The prior written notice must include, among other content, an explanation of why the agency determined that conducting the meeting is not necessary to ensure the provision of appropriate services to the student. 20 U.S.C. §§ 1415(b)(3) - (4) and 1415(c)(1); and 34 C.F.R. § 300.503. See *Analysis of Comments and Changes* accompanying the final IDEA Part B regulations. 71 FR 12406, 12476-12477, (March 12, 1999) available at: <https://www.gpo.gov/fdsys/pkg/FR-1999-03-12/pdf/99-5754.pdf>

If you have any further questions, please do not hesitate to contact Ms. Pagano at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

Laurie VanderPloeg
Director
Office of Special Education Programs