August 2, 2018

REDACTED

Dear XXXXXXX:

This letter responds to your electronic mail (email) correspondence to the Office of Special Education Programs (OSEP) and follow-up phone conversation with Laura Duos of my staff. You requested clarification on OSEP's *Letter to Champagne* (November 17, 2008), regarding the provisions in the Individuals with Disabilities Education Act (IDEA) addressing children with disabilities who transfer to a new State within the same school year. Specifically, you ask whether the new local educational agency (LEA) must evaluate a child who transfers from another State if the child already meets the new State's eligibility criteria. You also ask, when reviewing existing evaluation data available for the child, if a formal review of that data (by a school psychologist) is required or if an individualized education program (IEP) Team discussion/decision that is then documented on the prior written notice would be sufficient. We regret the delay in responding.

We note that section 607(d) of the IDEA prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, the 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 the IDEA in the context of the specific facts presented, and does not establish a policy or rule that would apply in all circumstances.

Under the IDEA, if a child with a disability who had an IEP in effect in a previous public agency in another State, transfers to a new 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 of the child that meets the requirements of 34 CFR §§300.304 through 300.306 (if the new public agency determines it is necessary); and

> (2) develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in 34 CFR §§300.320 through 300.324.

> 20 U.S.C. 1414(d)(2)(C)(i)(II); 34 CFR §300.323(f).

As stated in 34 CFR §300.323(f), the public agency in the new State conducts an evaluation of the child if the public agency determines it is necessary. The purpose of an evaluation is to assist

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in determining whether the child is a child with a disability under 34 CFR §300.8; and the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum. 34 CFR §300.304(b). This evaluation would be considered an initial evaluation that is subject to the notice and prior consent requirements. 34 CFR §300.300(a). Therefore, if the new public agency does not need additional information to determine the child's eligibility and the content of the child's IEP, it may not need to conduct an evaluation. This is a fact-based decision that must be made on a case-by-case basis.

Regarding your question concerning the review of existing evaluation data on the child under 34 CFR §300.305, the IEP Team and other qualified professionals, as appropriate, must review the existing evaluation data on the child as part of an initial evaluation (if appropriate) and as part of any reevaluation. This information includes evaluations and information provided by the parents of the child; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers. 20 U.S.C. 1414(c)(1). This review can occur without conducting a meeting (and parental consent is not required for the review of existing evaluation data on the child. 34 CFR §§300.305(c)) and 300.300(c)(1)(i). On the basis of that review, and input from the child's parents, the IEP Team must identify what additional data, if any, are needed to determine: 1) whether the child is a child with a disability, as defined in 34 CFR §300.8, and the educational needs of the child; or in the case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child; 2) the present levels of academic achievement and related developmental needs of the child; 3) whether the child needs special education and related services; or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and 4) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum. 34 CFR §300.305(a)(2)(B). While a school psychologist may participate in this review either as a member of the child's IEP Team or as another qualified professional, a school psychologist is not solely responsible for conducting the review of existing evaluation data under 34 CFR §300.305 because this is a determination to be made by the child's IEP Team, which includes the child's parents, and other qualified professionals, as appropriate.

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

Sincerely,

/s/

Ruth E. Ryder
Acting Director
Office of Special Education Programs