



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

11/17/2008

Jeffrey F. Champagne
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P.O. Box 1166
100 Pine Street
Harrisburg, Pennsylvania 17108-1166

Dear Mr. Champagne:

The U.S. Department of Education, Office of Special Education Programs (OSEP) is in receipt of your letter dated July 16, 2008, inquiring about the meaning of the phrase "initial provision of special education and related services" in 34 CFR §300.300(b)(1) of the final Part B regulations implementing the 2004 reauthorization of the Individuals with Disabilities Education Act (IDEA). Specifically, you ask how this phrase applies to situations where preschool children receive special education and related services under Part B of the Act from entities other than a school district and then transition to kindergarten and receive special education and related services from the school district. Additionally, you ask about the applicability of that phrase to a family that moves from one school district to another, either within the State or from another State.

As you know, 34 CFR §300.300(b)(1) requires a public agency that is responsible for making a free appropriate public education (FAPE) available to a child with a disability to obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. "Initial," as used in 34 CFR §300.300(b)(1), "means the first time a parent is offered special education and related services after the child has been evaluated in accordance with the procedures in §§300.301 through 300.111, and has been determined to be a child with a disability...." See Analysis of Comments and Changes to the Part B regulations, 71 Fed. Reg. 46540, 46633 (Aug. 14, 2006). Accordingly, "initial," in this context, relates to the provision of special education and related services under Part B of the IDEA and is not dependent upon the public agency that provides the services and whether or not that agency changes. Therefore, a parent's consent to special education and related services remains in effect regardless of whether a State allows entities other than a school district to provide special education and related services to preschool children. Additionally, the consent for the initial provision of services remains in effect if the public agency providing those services changes, such as when a child transitions to kindergarten from preschool. Once the parent provides initial consent for special education and related services, the child is entitled to FAPE, regardless of what public agency provides the services.

Concerning your question about a family that moves from one school district to another, either within the State or from another State, the Part B regulations contain requirements that apply when children with disabilities transfer into new school districts or a new State. If a child with a disability who had an IEP in effect in a previous school district or public agency, transfers to a

new school district or public agency within the same State and enrolls in a new school within the same school year, 34 CFR §300.323(e) requires the new public agency (in consultation with the parents) to 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 either adopts the child's IEP from the previous public agency or develops, adopts and implements a new IEP for the child that meets the applicable requirements in 34 CFR §§300.320 through 300.324. If the parent previously provided consent for the initial provision of services and the child never exited special education, there is no need for the new public agency to obtain consent for the provision of special education services.

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, 34 CFR §300.323(f) requires that the new public agency (in consultation with the parents) 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 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. Because the parent has previously provided consent for the initial provision of special education and related services, a public agency does not need to obtain additional consent to provide the child with FAPE solely because the child moved to a new State. However, if the new public agency determines that an evaluation is necessary to determine whether the child is eligible for special education and related services and the child's educational needs, the evaluation is considered an initial evaluation, and not a reevaluation. See Analysis of Comments and Changes to the Part B regulations, 71 Fed. Reg. 46540, 46682 (Aug. 14, 2006). Accordingly, in these circumstances, the public agency must follow the consent requirements for initial evaluations and the initial provision of special education and related services contained in 34 CFR §300.300(a) and (b).

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

We hope this provides the information you need. If you have questions about this issue, please do not hesitate to contact Laura Duos in the Office of Policy and Planning at (202) 245-6772.

Sincerely,

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William W. Knudsen
Acting Director
Office of Special Education Programs