Guidance Letters from OSEP
OSEP Letters

• POLICY LETTER 22-06: November 16, 2022, to Flanigan - Individuals with Disabilities Education Act

• Ensuring a High-Quality Education for Highly Mobile Children

• POLICY LETTER 22-05: November 1, 2022, to Sharpless - Individuals with Disabilities Education Act
Policy Letter 22-06: November 16, 2022, to Flanigan

Parentally-Placed Private School Children with Disabilities
• Question #1: Whether a child who has been identified as a child with a disability under Part B of the Individuals with Disabilities Education Act (IDEA), but for whom the parent has rejected the offer of a free appropriate public education, must be counted when calculating the proportionate share of IDEA funds that a local educational agency (LEA) is required to spend on the provision of equitable services to parentally-placed private school children with disabilities enrolled in private schools in the LEA.
Letter to Flanigan

• Response:
  • Any student found **eligible** under IDEA who is enrolled by their parent in a private elementary or secondary school, whether or not they have a current or prior IEP or services plan, must be counted when calculating the proportionate share.
  • IDEA does not require the private school to administer any portion of an LEA’s equitable services requirements on behalf of the LEA.
Letter to Flanigan

• Question #2: Whether it is consistent with IDEA for the LEA to require a private school to enter into an MOU as a condition of the LEA providing equitable services for parentally-place private school children with disabilities enrolled at that school

• Response:
  • IDEA does not require an LEA to use or prohibit an LEA from using, an MOU in order to provide equitable services at either the private school or another location.
  • An MOU must not prohibit the private school from filing a complaint related to the consultation requirement under IDEA and whether it was timely and meaningful.
Letter to State Directors of Special Education for Highly Mobile Children (November 10, 2022)

Highly Mobile Children
Ensuring High Quality Education for Highly Mobile Children

• Issue #1: Highly mobile children should have timely and expedited evaluations and eligibility 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
Ensuring High Quality Education for Highly Mobile Children

• When a child transfers to a new LEA in the same school year, whether the same State or in a different State, after the previous LEA has begun but has not completed the evaluation, both 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:
  • The new school district is making sufficient progress to ensure prompt completion of the evaluation;
  • The parent and the new LEA agree to a specific time when the evaluation will be completed. 34 C.F.R. § 300.301(d)(2) and (e).
Ensuring High Quality Education for Highly Mobile Children

- The parent and the new LEA agree to a specific time when the evaluation is completed. 34 C.F.R. § 300.301(d)(2) and (e).

- School districts are encouraged:
  - To complete their evaluations of highly mobile children within expedited timeframes (e.g. within 30 days to the extent possible)
  - Be consistent with each highly mobile child’s individual needs, whenever possible.

- Evaluations cannot be delayed by the local MTSS or RTI process.
Ensuring High Quality Education for Highly Mobile Children

• Issue #2: Comparable services include services during the summer, such as Extended School Year (ESY) services.

• New school district may not refuse to provide ESY services just because the services would be provided during the summer.
Ensuring High Quality Education for Highly Mobile Children

• Issue #2: Comparable services include services during the summer, such as Extended School Year (ESY) services.

• Determining comparable services is made on an individual basis

• New LEA IEP Team may not arbitrarily, or due to limited availability, decrease the level of services to be provided to the child as comparable services.
Ensuring High Quality Education for Highly Mobile Children

• In State transfer student:
  
  • ESY services determined to be comparable services must be provided either for the time determined appropriate by the new 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.
Ensuring High Quality Education for Highly Mobile Children

• Out of State transfer student:

• ESY services determined to be comparable services must be provided either for the time determined appropriate by the new 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.
OSEP Policy Letter 22-05 to Virginia Sharpless, November 1, 2022

Child Find
Letter to Sharpless

- Addresses verbal parental “request for evaluation”
- IDEA does not provide specific requirements regarding how a request for an initial evaluation must be made.
Letter to Sharpless

- States may develop their own procedures, provided they are not inconsistent with, and do not substantially limit, a parent’s right to request an initial evaluation under IDEA.

- States and LEAs need to properly address a parent’s verbal request that can be reasonably understood as a request for an initial evaluation under IDEA, but where additional actions are required under State or local provisions.