

Out of State, Interdistrict, and Intradistrict Transfers: What are the Schools' Obligations?

**Presented by
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Interstate / Out of State Transfers

- Students moving from one state to another during the school year
- New district becomes responsible for FAPE
- Reasonable efforts to obtain education records

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Out of State Transfers

- What FAPE is required?
 - Comparable services
 - As described in the IEP from the previous school district

34 CFR § 300.323 (f)

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Out of State Transfers

- What are comparable services?
 - No definition in the regulations
 - 5th Circuit - *Services "similar" to those the student received in the previous district*
 - *"similar" doesn't mean "identical"*

Bruno v. Northside Indep. Sch. Dist., 75 IDELR 243 (5th Cir. 2019)

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Out of State Transfers

- What are comparable services?
- Considerations:
 - Number of hours/minutes of instruction and services
 - Private services are not the same as IEP services
 - Half day v. full day program

Bruno v. Northside Indep. Sch. Dist., 75 IDELR 243 (5th Cir. 2019)

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Out of State Transfers

- Comparable Services required until:
 - 1) new district conducts an evaluation (if deemed appropriate), and
 - 2) develops, adopts, and implements a new IEP

34 CFR § 300.323 (f)

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Out of State Transfers

- ❑ Obtain records “promptly”
 - Public schools are required to provide copy of student’s records not later than the 10th working day after the request is received

34 CFR § 300.323(g);
Tex. Educ. Code § 25.002

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Out of State Transfers

- ❑ Is consent needed to exchange information with a sending school district?
 - No. FERPA provides that consent is not required where a student seeks or intends to enroll in another school.
 - 34 CFR § 99.31(a)(2)
 - Parent cannot prevent a disclosure.
 - *Letter to Anonymous*, 112 LRP 47381 (FPCO 2012).

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Out of State Transfers

- What records do we need?
 - IEP and supporting documents
 - Any other records relating to the provision of special education or related services

34 CFR § 300.323(g)

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Out of State Transfers

- What if records cannot be obtained?
 - Technically, if after reasonable efforts, no IEP can be obtained, school not required to implement a new IEP. However, a student should be placed in the regular school program and evaluated.
 - 34 CFR §§ 300.323(f); 300.304-306
 - (Can provide special education services pending reevaluation) if school and parent agree.
 - *Q&A on IEPs, Evaluations, and Reevaluations*, 111 LRP 53322 (OSERS 09.01.11).

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Out of State Transfers

- Timeline for evaluation:
 - Evaluation is considered an Initial FIE; 45 school days for evaluation
 - Go to ARD 30 calendar days from the date of the report

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Out of State Transfers

- When does the FAPE obligation start for the new district?
 - When the student enrolls.
- What about the 10-day rule?
 - There is no 10-day rule. 10 days “out of placement” only refers to disciplinary changes of placement.

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Intrastate / In State Transfers

- ❑ Transfers to another district in the same state, in the same school year
- ❑ What must be provided?
 - FAPE (comparable services) 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
 - Timeframe: 30 school days from the date the student is verified as being a student eligible for services

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In State Transfers

- ❑ Methods of verification of IDEA eligibility
 - In writing or by telephone by the previous school district

19 Tex. Admin. Code § 89.1050(j)(2)

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Interdistrict Transfers

- Boards may agree to allow a student transfer to an adjoining district
 - Tex. Educ. Code § 25.032-035
- Board Policy DFA (LEGAL) / (LOCAL)
- No rejections can be based on race, religion, color, sex, disability, national origin, or ancestral language

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Interdistrict Transfers

- Non-discriminatory reasons for rejection:
 - Availability of space
 - Instructional staff
- Check local policy for other reasons that may be allowed or prohibited: academic performance, discipline, attendance

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Interdistrict Transfers

- FAPE
 - What about transportation?
 - What about homebound instruction?

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Intradistrict Transfers / Classroom Assignments

- Student / parent schools of choice
- Bullying
- Schools with unacceptable ratings
- Tex. Educ. Code – a board or designee may assign and transfer any student from one school facility or classroom to another – 25.031

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Intradistrict Transfers / Classroom Assignments

- Centralized Programs
- "A district can place a child in a particular classroom or school based on the availability of special education services; however, it cannot allow such concerns to dictate the child's placement on the LRE continuum."
 - *Letter to Trigg*, 50 IDELR 48 (OSEP 2007).

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Intradistrict Transfers / Classroom Assignments

- Site selection / centralized programs v. Placement / LRE
- Consideration for changes:
 - Social stories
 - School tours
 - Familiar scheduling / classroom routines

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What about...?

- ❑ An IEP that calls for services we don't have?
 - Student's IEP from previous school district calls for music therapy 1x per week, for 30-minute sessions to support math calculation goal.
 - Review evaluation that supported related service of music therapy.
 - What skill is targeted? Look at the academic goal and objective supported by music therapy. Does the music support memory? Fluency?

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What about...?

- ❑ An IEP that calls for services we don't currently have?
 - Review the "comparable" standard
 - Evaluate
 - If it's needed, we will provide it
 - Don't stray too far from existing services
 - Evaluate before denying services
- ❑ If parent and district cannot agree on "comparable" services; mediation or due process can be used to resolve the dispute

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Is it okay to...?

- Ask a parent to keep a child at home pending an IEP meeting?
 - No – FAPE must be provided when the student enrolls in the new district; cannot deny special education and related services pending the development of a new IEP
 - *Q & A on IEPs, Evaluations, and Reevaluations*, 111 LRP 63322 (OSERS 2011)

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What about...?

- Summer Transfers – 47 TexReg 3248
 - If a student with an IEP enrolls during the summer, the new school district must implement the IEP from the previous school district on the first day of class of the new school year
 - or
 - Convene an ARD during the summer to revise the student's IEP for implementation on the first day of class of the new school year

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What about...?

- ESY
- Do comparable services include ESY?
 - Yes. School cannot refuse to provide ESY services to a child merely because the services would be provided during the summer.
- Ask:
 - Does IEP currently call for ESY?
 - Did IEP from last summer call for ESY?

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What about...?

- Stay-put protections?
 - It depends.
 - Interstate v. intrastate may make a difference
 - What about residential or private day placements?

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What about...?

- ❑ Stay-put protections?
 - Student placed in private school and public school paid for it. Family moves to a new District in the same state. New district proposed “comparable services” but not at the same private school.
 - Court rejected parents’ argument that new school had to pay for private placement.
 - *Y.B. v. Howell Township BOE*, 79 IDELR 31 (3rd Cir. 2021).

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What about...?

- ❑ Stay-put protections?
 - Court went on to say that the parents never gave the new school the chance to comply with transfer provisions or provide student a FAPE.
 - *Y.B. v. Howell Township BOE*, 79 IDELR 31 (3rd Cir. 2021).

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What about...?

- Stay-put protections?
 - Remember – “stay-put” comes into play only during an administrative or judicial proceeding or appeal.
 - It is not triggered by a move or transfer to another district.

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What if...?

- The District wants to revoke an out-of-district transfer?
 - Does the reason for revocation relate to a student’s disability?
 - How do we know?
 - Is the policy or practice neutral as to disability?
 - Have other non-disabled students experienced a revocation?
 - Does the policy or practice have a disproportionate impact on students with disabilities?
 - Is there a substantial legitimate justification for the policy?

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What if...?

- An initial evaluation is pending when a student transfer to another public school district
 - Coordinate with previous and subsequent schools – as necessary and expeditiously as possible to ensure **prompt completion of the evaluation.**
 - 34 CFR § 300.304(c)(5).

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What if...?

- The timeframe for the initial evaluation does not apply when:
 - The new school is making **sufficient progress** to ensure a prompt completion of the evaluation; and
 - The parent and the new school district **agree to a specific time** when the evaluation will be completed

19 Tex. Admin. Code § 89.1011(f)

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What if...?

- There is inadequate data?
 - OSERS suggests the school “provide interventions while it is in the process of completing the evaluation.”
 - Also – don’t delay in completing the evaluation for this reason.

Letter to State Directors of Special Education, 61 IDELR 202 (OSERS 2013)

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What if...?

- The District wants to revoke an out-of-district transfer?
- Even if policy is not discriminatory, consider the following:
 - Comm’r of Education decision regarding mid-year revocation
 - *Child v. Skidmore-Tynan ISD*, Dkt. No. 026-R5-1110 (Comm’r Educ. August 7, 2013).
 - *What if we are a District of Innovation?*
 - Whether or not the reason is related to the disability; consider holding a manifestation determination review
 - Whether a revocation results in a FAPE denial
 - Risk of failure to identify / Child Find claim
 - Risk of allegation of discrimination based on disability

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What if...?

- ❑ The parent never informs the new school that the child had an IEP in a previous school district?
 - Technically, the omission is not the district's fault.
 - However, review forms for indication of 504 plan or IEP.
 - Consider whether student records, grades, other information appears to indicate special education services were required.
 - Once on notice, the district must act promptly to obtain records, hold an IEP meeting, develop an IEP, and reevaluate, if necessary.

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