

# Foster Care & Education Q&A

## MOBILITY ISSUES AND SPECIAL EDUCATION FOR CHILDREN IN OUT-OF-HOME CARE

### **Q: Does special education law address the issue of children who move schools?**

A: When the Individuals with Disabilities Act (IDEA) was substantially amended in 2004, Congress took special care to clarify the rights of children who move school districts. Since children and youth in care have an average of one to two home placement changes per year, often resulting in an equal number of school moves, these rules can help ensure that their educational transitions are smooth.

### **Q: What happens if a child enrolls in a new school district after a special education evaluation has begun, but before the old school district has completed the special education evaluation?**

A: A school district must complete a child's special education evaluation within 60 calendar days of its receipt of the IDEA parent's written consent (unless state law has a different deadline). See 34 C.F.R. §300.30. If a child changes school districts before her initial evaluation has been completed, the new school district must still complete the evaluation within the same 60 calendar day timeframe (or the state deadline) unless the new district is making sufficient progress to ensure prompt completion and the district and the IDEA parent agree to a specific alternate time for completion. 34 C.F.R. §300.301(c)(1), (d)(2) and (e); §300.304(c)(5). In addition, the sending and receiving school entities must make sure that the assessments of children who change

school districts during the school year are coordinated as quickly as possible to ensure prompt completion of full evaluations.

### **Q: OK, that helps for children who are being evaluated for the first time. What happens if the school district has decided that the child is eligible for special education services and developed her Individualized Education Program (IEP) – and then the child changes school districts?**

A: There is help in that situation too. If a child with an IEP moves from one school district to another (either in or out of state) within the same school year, the new district must provide a "free appropriate public education" (FAPE), including "services comparable to those described in the previously held IEP," until the new district formally adopts the old IEP or negotiates a new IEP with the parent. If the child is transferring from another state, the school district may decide to conduct a new evaluation before developing an IEP; during that time the child should continue to receive "comparable services." 34 C.F.R. §300.323(d).

### **Q: When is a child eligible under IDEA entitled to transportation to her new or old school?**

A: Check your state and school district transportation rules and policies for all students. Transportation to, from, and around the school is a



“related service” that must be provided to an IDEA eligible student, if she needs transportation to benefit from her special education program. Transportation must meet the child’s specific needs. So if the child has a physical disability and needs a lift bus, that should be provided. If the child only needs a token or a regular school bus, that would be sufficient.

Federal disability rules do not require the new school district to transport a child to the old school district unless that is the agreed upon special education placement. However if the student is eligible under the McKinney-Vento Act and it is determined under that law that it is in the best interest of the student to remain in her original school, she is entitled to necessary transportation to that school and other protections.

**Q: How do you ensure that the old school sends the education records to the new school as quickly as possible?**

A: The new school district must take reasonable steps to promptly obtain the child’s records, including the IEP and supporting documents, from the previous school district; the old district must take reasonable steps to respond to the request promptly. 34 C.F.R. §300.323(g). Check your state law to see if there are any deadlines for records transfers or enrollment.

**Q: Do school districts and the state have any obligation to find children who need special education?**

A: Yes. One of the states’ and local education agencies’ most fundamental duties is “child find” – that is, to identify, locate, and evaluate eligible children and to ensure that they receive needed special education and related services.

**Q: Is there any specific “child find” obligation for children in out-of-home care?**

A: The IDEA explicitly includes IDEA “wards of the State” (children in the custody of a child welfare agency who do not have a foster parent who can serve as an IDEA parent) and “highly mobile children” as children to whom the state and local agencies have a child find duty. 34 C.F.R. §300.111. Children in care who are in

residential settings, especially those who do not have active IDEA parents, are often overlooked by school districts. Good advocacy is needed to make sure this does not happen. Also, see the Legal Center for Foster Care and Education’s Q&A on state level surrogate parent programs which addresses how those programs can help IDEA eligible children who need surrogate parents.

**Q: What can child welfare advocates do to help children eligible for special education services who move schools?**

A: Numerous studies show that between 23% and 47% of children and youth in out-of-home care in the U.S. receive special education services at some point in their schooling. Even so, many children who need this help are never identified, while others who need remedial help but do not have disabilities are wrongly identified as needing special education. Both these issues get compounded when children in care are moving frequently. To address these issues advocates can use the following tips:

- Make sure the child has a legally authorized special education decisionmaker and that this individual pays attention to timelines for evaluations and IEP implementation.
- Whenever possible, make sure that the decisionmaker sticks with the child through any school transitions.
- Advocate for the child to remain in the same school even if her living arrangement changes whenever it is in her best interest. Check whether this is possible or mandated under your state law or mandated by McKinney-Vento for “children awaiting foster care placement.”
- Help expedite enrollment when a school change is necessary. Know what documents are required (and what documents are not required) for enrollment and what the rules and deadlines are in your state or school district.
- Make sure necessary enrollment documents are part of each child’s child welfare records. Let the new school district know the child is coming and try to meet with school officials before the child moves. Consult with the child and the prospective caretaker. Plan ahead!

