

Special Education Staff Meeting
April 17, 2009

Compliance Issues

Diagnostic Placements; Temporary IEPs; Procedures for Previously Exited Students

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1. Question: "Once the SAT committee makes a diagnostic placement in a SPED program, how long could a diagnostic placement last?"

Answer: *The premise to the question is incorrect.* The SAT committee has NO authority to place a student in special education via a "diagnostic placement," either "temporarily" or under any other scenario or circumstance. SAT teams may not circumvent the procedural requirements of the IDEA.

2. Question: Then what exactly is a "diagnostic placement"?

Answer: Diagnostic placements are allowed in situations wherein an IEP team believes more information is needed in order to make a final decision about an appropriate placement for a student. They permit personnel to evaluate how the child fares in a particular placement. If the student adjusts well, the placement may become permanent. On the other hand, if the placement fails, a more suitable setting will be considered by the IEP team, taking into account what has already been learned about the student's needs.

A diagnostic placement should last only for a short time -- no longer than is needed to gain the necessary information about the student. The following guidance from Appendix A to the 1999 IDEA Regulations - Question 14, applies when a district decides to use a diagnostic placement:

- Develop an interim IEP for the child that explains the specific conditions and timelines for the trial placement. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing and revising the child's program.
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- Set specific deadlines (e.g., 30 days) for completing any necessary evaluations, finalizing the IEP, and determining the appropriate placement for the student.
- Conduct a meeting at the end of the trial period in order to complete the child's IEP.

3. Question: What is a "temporary IEP" and when is it used?

Answer: The term "temporary IEP," as used in the Gadsden Independent School District, means a short-term (generally not to last more than 30 calendar days), developed for a student new to the district with a current IEP (identified under the IDEA),

for whom incomplete records are available from the student's previous district. *(If the parents provide complete and current records – based on apparently valid assessment data and developed in accordance with all governing federal regulations and state statutes, there may be no need for a temporary IEP. The records presented by the parents may be sufficient for the IEP team to immediately develop an IEP designed to provide FAPE to the student for the coming 12 months.)*

The IDEA does not obligate a district receiving a special education student from another state to accept the evaluation results, eligibility determinations, and IEP decisions made in another state. If the new district disagrees with either the evaluation or the IEP from the prior district from another state, then it must comply with the IDEA regulations concerning evaluations (conduct a new one) and IEP requirements (develop a new one). The clear implication is that for a student transferring from another district in the same state, there is a *presumption* that the evaluation, eligibility determination, and IEP decisions are in accordance with federal and state statutes. Nevertheless, whether the student is from in-state, or out-of-state, the new district is obligated to provide FAPE, in accordance with the federal regulations as well as the new district's state education standards, to all eligible students.

In those instances where a transfer student (from in-state *or* out-of-state) produces a current IEP, the district must provide FAPE to the child when the child enrolls in the school, and may not deny services to the child pending the development of a new IEP. 47 IDELR 166 (OSERS 2007) To "provide FAPE" means that whether the student is transferring *intrastate* or *interstate*, the district must provide services *comparable** to those described in the previously held IEP, in *consultation with the parents* until such time as the district adopts the previously held IEP or develops, adopts, and implements a new IEP (based on a new evaluation if it was deemed necessary) that is consistent with federal *and state* law. 34 CFR 300.323(e), (f)

In those situations where an out-of-state transfer student cannot produce a current IEP, leaving the parent as the source for identifying comparable services, OSERS has stated that the district must place the child in the regular school program pending 1) a new evaluation (if deemed necessary by the receiving district IEP team), and 2) the development of an IEP. 47 IDELR 166 (OSERS 2007)

Transmittal of records. Federal regulations require that the new school at which the child has enrolled take reasonable steps to *promptly* obtain the child's records, including the IEP and supporting documentation, along with any other records relating to the provision of special education and related services to the child from the previous district. The prior school must take reasonable steps to *promptly* respond to any such request from the new school. 34 CFR 300.323(g)

*The ED declined to define "comparable services" in the 2006 Final Part B regulations. It explained that the Department interprets "comparable" to have the plain meaning of the word, which is "similar" or "equivalent".

4. Question: What is the procedure to follow when a student has been exited from special education (either in another state or within the same state/district) and there is evidence the student should not have been exited – either because the decision was based on an incomplete evaluation or because there is evidence the child is still a child with a disability in need of special education and related services? (NOTE: Exited students do NOT include students for whom the parent has revoked consent)

Answer: Scenario 1 (Former district special education student exited out-of-state). When there is evidence that the evaluation upon which the other state based its determination to exit the student was incomplete or otherwise flawed, *an IEP team should be convened on behalf of the student*, all the available data reviewed, and a decision made whether to request a new evaluation upon which to reconsider eligibility. As stated in Question 3 above, **the IDEA does not obligate a district receiving a special education student from another state to accept the evaluation results, eligibility determinations, and IEP decisions made in another state.** If a decision is made to conduct a new evaluation, a WNPA should clearly explain to the parent the rationale for the request. While the district is completing a new evaluation, the student would be placed in the regular school program unless, for safety or other reasons, it is clearly not feasible to do so.

Scenario 2 (Student exited within the district). When there is evidence (e.g., an exited Early Childhood SLI student, now in first grade, stutters) that a student may have been exited from special education while still a student with a disability in need of special education and related services, *an IEP team should be convened on behalf of the student*, all the available data reviewed, and a decision made whether to request a new evaluation upon which to reconsider eligibility. If a decision is made to conduct a new evaluation, a WNPA should clearly explain to the parent the rationale for the request – *taking into consideration any factors that could have legitimately led a previous IEP team to determine the student no longer was in need of special education and related services.* While the district is completing a new evaluation, the student would remain in the regular school program unless, for safety or other reasons, this is not a feasible option.

In both scenarios above, the amount of time elapsed since the student was exited should be taken into consideration. In other words, the longer the time elapsed since the student was exited (e.g., three or more years), the more likely it becomes that the appropriate action would be to refer the student to the SAT in the same manner as any other general education student. By the same reasoning, the shorter the time elapsed since the student was exited (e.g., from less than one through two years), the more likely the student is still a student with a disability in need of special education and related services – requiring the convening of an IEP team on behalf of the student to determine the action to be taken.

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