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Complaint Investigation Findings

In-State and Out-of-State Transfer Students

What are the requirements when a student transfers from another Idaho school district? What are the requirements when a student transfers from an out-of-state district? These issues were investigated and discussed in two recent complaint investigations.

In-State Transfer Students

C-17-12-12a & C-17-12-12b

Summary of Facts: Two elementary students (Student A and Student B) on IEPs transferred mid-year from a neighboring school district. The District met informally with the Parent in November 2017, to discuss the transfer. The District received the Students' eligibility reports and IEPs and the Students began attending a District school on November 29, 2017, immediately following Thanksgiving break. Prior to the Students' enrollment, and immediately following their enrollment, no formal meeting with the Parents occurred, although the Parent signed a "Consent to Bill Medicaid," a "Confidential Student Information Exchange," and the District enrollment forms.

The IEP for Student A expired on December 6, 2017. The District scheduled an IEP meeting for December 7 and sent the Parent an Invitation to a Meeting. Student A attended the District school for 4.5 days, and Student B attended for 5 days before the Parent elected to withdraw the Students.

Legal Requirements for In-State Transfers

IDAPA 08.02.03.109.04 (e)&(f):

"When a student who has been determined eligible for special education, as indicated by a current IEP, transfers from one (1) Idaho education agency to another, the student is entitled to continue to receive special education services. The receiving education agency may accept and implement the existing IEP or may convene an IEP team meeting to develop a new IEP. If a new IEP cannot be developed within five (5) school days, or if the education agency wishes to re-evaluate the child, an interim (short-term) IEP shall be implemented pending development of the standard IEP"

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Idaho Special Education Manual Chapter 5, Section 4 A, page 103 Requirements:

“When a student with a disability transfers school districts with a current IEP in Idaho, the district shall provide the student with FAPE. This includes services comparable to those described in the previously held IEP, in consultation with the parent/adult student, until such time as the district adopts the previously held IEP or develops, adopts and implements a new IEP”

Complaint Investigator Findings: The District provided FAPE to both Students for the short duration in which they attended the District’s school. However, while the District informally reviewed the Students’ IEPs from the neighboring school district, and school personnel met with the parent to tour the school and discuss provisions of the Students’ IEPs, no formal meetings with the Parent were held within 5 days of the Students’ enrollment. Such meetings were necessary to review the neighboring school district’s IEPs and determine whether the IEPs would be adopted, or whether new IEPs would be developed and implemented. While the District had scheduled an annual review IEP meeting for December 6, 2017 for Student A, this date was 6 school days after the Students’ enrollment. The failure of the District to hold IEP meetings within 5 days of enrollment also prevented the Parent with an opportunity to participate in meetings to review, accept or assess the Students’ transferred IEPs. The District was found out of compliance.

Out-of-State Transfer Students

C-18-01-22a

Summary of Facts: A Parent visited an Idaho school district from out of state and provided the District with a copy of the Student’s eligibility documentation and IEP on January 31, 2017. The Student’s out-of-state school district had determined that the Student was eligible for special

education services under the category of Specific Learning Disability (SLD). The District considered the out-of-state eligibility documentation and IEP on February 6, 2017 at a Multi-Disciplinary Team (MDT) meeting. The MDT determined that the Student was ineligible for special education and related services based on the previous state not requiring Response to Intervention as a component to determine eligibility for SLD. The District did not provide the Parent with an Invitation to a Meeting, and the Parent did not attend the MDT meeting. The District did receive consent from the Parent for an initial evaluation to determine eligibility.

Legal Requirements for Out-of-State Transfers

IDAPA 08.02.03.109.04.f:

“If a student who is eligible for special education in another state transfers to an Idaho education agency, the Idaho education agency shall request a copy of the student’s most recent eligibility documentation and IEP within two (2) school days. Within five (5) school days of receipt of the eligibility documentation and IEP, the Idaho education agency shall determine if it will adopt the existing eligibility documentation and IEP. If the education agency disagrees with the existing eligibility documentation, or if the documentation is not available within a reasonable time period, consent for an initial assessment shall be sought. While the assessment and evaluation is in process, the education agency may implement an interim IEP if the parent or adult student agrees. If the parent or adult student does not agree to an interim IEP, the student shall be placed in general education.”



Complaint Investigator Findings: While the District considered the Student's out-of-state eligibility documentation and IEP, the District did not convene an IEP team meeting with parent participation prior to making the decision that the Student's evaluation did not meet Idaho state criteria and determining the Student was ineligible for special education and related services. The District was found out of compliance.

Additional Analysis: The Idaho State Department of Education has an informative guidance document entitled "[Sufficiency Review: Transfers from Out of District and Out of State](#)," which provides Idaho school districts with the necessary information to meet all requirements for both the receiving school and the prior school whenever a transfer student enrolls. In addition, Idaho school districts should use the "[Sufficiency Review](#)" form upon receiving a transfer student with an IEP. Both the guidance document and Sufficiency Review form clearly identify the timelines in which action must be taken by the receiving district upon a student's transfer.

Properly Amending an IEP

School districts can amend a student's IEP by either 1) convening an IEP team meeting; or 2) receiving written agreement from the parent that the IEP can be amended without the need for a meeting. In either case, a copy of the IEP with the amendments incorporated and prior written notice must be provided to the parent. Several complaint investigators recently addressed whether school districts properly followed the process for amending an IEP.

C-17-12-29a

A Student's April 11, 2017 IEP provided for 900 minutes per week of indirect behavior support in the general education classroom and 60 minutes of direct support in the special education Resource Room per week. On September 13, 2017, the District increased the Student's behavior support

to 1725 minutes per week. The change occurred without amending the IEP through an IEP team meeting, and without the Parent's written agreement. The District also failed to provide the Parent with a copy of the IEP amendment and failed to provide written notice. The District was found to be out of compliance.

C-18-01-26a

A preschool Student attended a District's program on a part-time basis several days a week due to



outside private therapy sessions. The Student's IEP was amended so that the Student would receive direct paraprofessional support in the classroom to help the Student attend to academic work in the mornings, as well as

direct support for transitions and non-academic activities in the afternoon. IEP meeting notes established that the Parent fully participated in the IEP meeting, and her concerns were noted. The Parent received an Invitation to a Meeting and a copy of the amendment to the Student's IEP. On this issue, the District was found in compliance.

C-18-02-13a

A Student's IEP was amended in April 2017 in anticipation of the Student transitioning from preschool to Kindergarten, with an effective date of September 14, 2017. The IEP team further met on January 24, February 7, and March 12, 2018, which resulted in an amended IEP for the Student. The District documented the IEP team meetings that resulted in the amendments and provided copies of the amended IEP, to which the Parent had consented. The District was found in compliance.

C-18-03-05a

A Student received services from a Teacher of the Visually Impaired (Teacher) and a TVI paraprofessional (Para). The Teacher requested

leave under the Family and Medical Leave Act, which was granted. The Parent believed the absence of the Teacher constituted a change in placement, as the Parent believed the Student would receive less services from the Teacher, while on leave. The Student's IEP provided for vision services to be provided by the Teacher or the Para, under the supervision of the Teacher. While the Teacher was on leave, the Para provided the IEP vision services, and the Teacher provided direct supervision to the Para through twice weekly consultations. At no time while the Teacher was on leave did the Student receive less services than required by the Student's IEP. The complaint investigator found that the Student's IEP had not been amended, and the District was found in compliance.

Additional Analysis:

It is important that the appropriate IEP amendment process be utilized by school districts, as the unilateral amendment of an IEP by school personnel could result in a denial of a free appropriate public education (FAPE) to a student. The Ninth Circuit Court of Appeals, in the recent case of *M.C. v. Antelope Valley Union High School District*, 852 F.3d 840 (9th Cir.), as amended, 858 F.3d 1189 (9th Cir. 2017), cert. denied, ___ U.S. ___ (12/11/17), determined that a California school district denied a student a FAPE when the district unilaterally changed a student's IEP and provided more services than originally identified on the IEP. The court held that the district's post-IEP meeting increase of service minutes impeded the parent's ability to monitor the implementation of the IEP. "An IEP, like a contract, may not be changed unilaterally. It embodies a binding commitment and provides notice to both parties as to what services will be provided to the student during the period covered by the IEP. If the District discovered

that the IEP did not reflect its understanding of the parties' agreement, it was required to notify M.N. [parent] and seek her consent for any amendment. . . Absent such consent, the District was bound by the IEP as written unless it sought to re-open the IEP process and proposed a different IEP."

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