

Questions/Answers  
As a Result of SPED Monitoring  
May 13, 2011 TETN

Question 1: 34 CFR §300.323(e) states:  
If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency, in consultation with the parents, must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency . . .

What is meant by "within the same school year"? Could it mean "IEP year"?

Answer: IDEA 2004 uses the term "academic year." When the federal regulations were proposed in 2005, §300.323(e) the term "academic year" was also used. The Office of Special Education and Rehabilitative Services (OSERS) changed the term to "school year" when it finalized the regulation on the basis that "school year" is more commonly used by parents and school officials. Therefore, school year means academic year, not IEP year.

Question 2: If an LEA received an IEP from the student's previous LEA that reflects that the period for the IEP is April 1, 2011, to March 31, 2012, would the new LEA be required to have an ARD committee meeting before the 2011-2012 year begins?

Answer: When a student transfers to another LEA in the same state during the school year, the new LEA would be required to meet within 30 days to either adopt the previous LEA's IEP or develop a new IEP. (When a student transfers from another state, the LEA is required to conduct an evaluation, if determined to be necessary, or develop and adopt a new IEP). If the new LEA adopts the previous LEA's IEP, which extends into the next school year, the LEA would not be required to have another ARD committee meeting before the next school year begins, but the ARD committee would need to meet to review and revise the student's IEP before the IEP year expires.

Question 3: If a student transfers from another state, and the LEA feels that it needs to conduct a new evaluation, is that evaluation considered an initial evaluation or a reevaluation?

Answer: Response: In the comments to the federal regulations, OSERS explained that an evaluation conducted by the new LEA would be to determine if the child is a child with a disability and to determine the educational needs of the child. "Therefore,

the evaluation would not be a reevaluation, but would be an initial evaluation by the new public agency, which would require parental consent.”

Question 4: If an 18 year old student gives his parents power of attorney, is that the same as guardianship?

Answer: A power of attorney is not the same thing as guardianship. A power of attorney is an instrument that authorizes another person (called an “attorney-in-fact” or “agent”) to make certain decisions on behalf of the person making the power of attorney appointment. A parent can execute a power of attorney that allows another to make decisions for a child in place of the parent, including health care, welfare, and educational decisions, for a certain period of time or until the parent revokes the power of attorney. In addition, an adult student who holds rights under IDEA can execute a power of attorney authorizing someone else to act on his or her behalf. A power of attorney must be signed in front of a notary public but does not have to be filed with a court. Obtaining guardianship over a person involves the court system. The person seeking to be appointed as guardian must submit an application to the appropriate court, and the court will determine whether guardianship should be granted. .

Question 5: TEC §25.002 requires that a previous LEA furnish a transfer student’s records within 10 working days after a request is received. 19 TAC §89.1050(f)(4) requires that a previous LEA furnish student records within 30 calendar days of the student’s enrollment in the new LEA. Please clarify.

Answer: TEC §25.002 requires the previous LEA to transmit the student’s current IEP through the Texas Records Exchange (TREx) system within 10 working days from receiving the request. The 30-day timeline referenced in 19 TAC §89.1050(f)(4), applies to the rest of a student’s eligibility record requested by a new LEA.

Note: The Texas Education Agency intends to clarify the timelines for transmitting student records in the next rule adoption.