



## OUT-OF-STATE TRANSFERS FOR STUDENTS WITH DISABILITIES QUESTIONS AND ANSWERS

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- 1. What steps should a local educational agency (LEA) take to begin the evaluation process for a student who enrolls in a Pennsylvania LEA from out of state regarding special education records?**

When a student enrolls in a new public agency from out of state and cannot provide current special education records (e.g., evaluation report, Individualized Education Program (IEP)), the LEA is encouraged to ask the parent questions regarding the type of program and amount of services the student may have received from their public agency. Also, the multidisciplinary team will conduct observations, gather relevant information, and complete necessary testing to determine special education eligibility in Pennsylvania through an initial evaluation. Comparable services should be provided until the completion of an evaluation and development of an IEP, if appropriate.

- 2. If a child with an IEP from out of state enrolls in a Pennsylvania LEA and it is determined that the child requires an evaluation, should the LEA conduct an initial evaluation or a reevaluation?**

The LEA should conduct an initial evaluation to determine eligibility for special education programs and services. The LEA must implement the existing IEP until the evaluation is completed.

- 3. If a child with an IEP from out of state enrolls in a Pennsylvania LEA, does the new LEA use the Permission to Evaluate consent form or the Permission to Reevaluate consent form to initiate the evaluation process?**

The United States Department of Education, Office of Special Education Programs (OSEP), has determined that this would be an initial evaluation. The LEA should issue the Permission to Evaluate consent form.

- 4. What does “informed written consent” mean?**

This phrase means the parent/guardian has been fully informed of all information relevant to the proposed action to be taken regarding the child and that information was provided in his or her native language, or via another mode of communication, and that the parent/guardian agrees in writing to the school entity carrying out the proposed action for which consent is being sought.

**5. If the parent of a child who transfers from out of state refuses to provide consent for the initial evaluation, what options does the LEA have?**

The LEA may go to due process to override the parent's refusal to consent to the initial evaluation. However, the LEA would not be in violation of a free appropriate public education if it decided to forgo an initial evaluation through due process. The LEA has a child find responsibility and meets this responsibility by issuing the Permission to Evaluate. Since the purpose of the evaluation is to determine eligibility in Pennsylvania, if the parent refuses consent, the LEA has met its child find responsibility. Because the initial evaluation to determine eligibility in Pennsylvania cannot be conducted, the child is not considered eligible for special education programs and services.

**6. What evaluation procedures should be followed to determine the eligibility for special education services?**

According to 34 § CFR 300.304 Evaluation procedures. (c) *Other evaluation procedures.*  
"Each public agency must ensure that –

- (1) Assessments and other evaluation materials used to assess a child under this part -
  - (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
  - (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
  - (iii) Are used for the purposes for which the assessments or measures are valid and reliable;
  - (iv) Are administered by trained and knowledgeable personnel; and
  - (v) Are administered in accordance with any instructions provided by the producer of the assessments."

When an interpreter is used during testing, the interpreter should be fluent in both the language of the test and the examinee's native language, should have expertise in translating, and should have a basic understanding of the assessment process. Although individuals with limited proficiency in the language of the test should ideally be tested by professionally-trained bilingual examiners, the use of an interpreter may be necessary in some situations. If an interpreter is required, the professional examiner is responsible for ensuring that the interpreter has the appropriate qualifications, experience, and preparation to assist appropriately in the administration of the test. It is necessary for the interpreter to understand the importance of following standardized procedures, how testing is typically conducted, the importance of accurately conveying to the examiner an examinee's actual responses, and the role and responsibilities of the interpreter in testing.

**7. Which factors should be considered prior to referral for evaluation regarding English Learners (ELs) with disabilities?**

LEAs must ensure that the English as a Second Language (ESL) program is appropriate in terms of planned instruction for ESL and content per the Basic Education Circular (BEC) 22 PA Code 4.26 Educating Students with Limited English Proficiency (LEP) Students and English Language Learners, Date of Issue July 1, 2001, Date of Review April 14, 2009. As used here, the term program refers to:

- (1) Planned instruction by a qualified ESL/bilingual teacher.
- (2) Adaptations/modifications in the delivery of content instruction by all teachers based on the student's language proficiency level and the Pennsylvania Language Proficiency Standards (PA ELPS) for English Language Learners as well as the Pennsylvania academic standards.

LEAs must ensure that their program is effective before referring the child for evaluation. Is there evidence that:

- ESL instruction is sufficient in quantity and quality?
- The core ESL instructional program is effective and aligned to the proficiency level of the student and the English Language Proficiency Standards?
- Planned instruction in content areas is being delivered per the English language proficiency level of the student and the English Language Proficiency Standards and appropriate ESL-related adaptations/modifications is provided by content teachers?
- Collaboration exists between the ESL and content teachers?
- Instruction and home-to-school communication is culturally responsive?

**8. When evaluating (or reevaluating) EL students with disabilities, should the ESL teacher be a member of the evaluation team? Should assessment data related to second language acquisition be part of the evaluation report?**

Yes. The ESL teacher should be a member of the evaluation (or reevaluation) team for an EL. The assessment data, such as the data from classroom observations, progress monitoring, and the results of formative and summative assessments, including data from the annual English language proficiency assessment ACCESS for ELs, should be discussed and be part of the evaluation. In the absence of standardized assessments that are culturally and linguistically appropriate for ELs, the evaluation team must consider multiple data sources (e.g., years in the United States, years of instruction in English, W-APT level, etc.) Data related to the second language acquisition process should be part of the present levels indicating how the student is performing in listening, speaking, reading and writing skills; how the student compares to other ELs with similar profiles; and the student's progress in relation to what is developmentally appropriate for his or her English language proficiency level, per the WIDA Can-do Descriptors and Summative Assessment Framework. Realizing that no single test will accurately represent the abilities of the student, and recognizing language and cultural barriers, the expertise of an ESL teacher will be necessary to determine valid recommendations regarding evaluation/placement and ongoing ESL instruction for ELs.