



MISSOURI COUNCIL OF ADMINISTRATORS OF SPECIAL EDUCATION

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Student Transfer – Special Education Issues

Any transfer guidelines must carefully address special education issues. To date, the experience in St. Louis is difficult to apply to other areas of the state because of the unique responsibility of Special School District of St. Louis County for provision of special education services in that part of the state. Currently there is very little guidance for districts to use in making decisions about accepting transfer students with special education needs, reimbursement for costs associated with providing special education services that far exceed statutorily provided tuition payments, or which district has legal responsibility for delivery of FAPE under IDEA, 504 and state law. The following are critical special education issues that need to be addressed regarding transfers.

1. Use of general education class size as the determination of acceptance of a transfer student may be completely inappropriate if the student also receives special education services. Some students have unique disabilities with very specialized instruction and/or intervention needs that demand teachers or classrooms that are unavailable. It is unclear what responsibility a receiving district has to “build” a program for a special education student who requires services that are not currently available or insufficient in the district to provide the student with a free appropriate public education (FAPE) as is required by IDEA.

2. A clear determination must be made about which district is responsible for FAPE and all associated due process rights and responsibilities-- the sending or receiving district. It cannot legally be a shared responsibility. Missouri regulations place responsibility for FAPE on the district of residence. It is unclear if a parent waives their right to FAPE by transferring the child from an unaccredited district (where FAPE is available) to an accredited district.

State law regarding student transfers is a tuition program. The district of residence continues to receive the state aid and pays another district to provide educational services. This could be viewed as analogous to a contractual/tuition situation a district enters into voluntarily and in that situation the district of residence retains FAPE responsibility. Or this could be viewed differently because state statute is authorizing the transfer and the district of residence did not enter into the tuition payment voluntarily. However, there are other situations in which a district is forced to place a child out of district (e.g. a due process or court decision) and FAPE remains responsibility of the district of residence. This issue must be clarified.

3. Clarification must be provided about available funding to assist receiving districts provide special education services. For example, if IDEA funding is provided to the district of residence how it would flow to the receiving district? Another example is how to access the High Need Fund -- whose per pupil expenditure data is used for the three times per pupil calculation and who can claim that funding? Access to all special education funding sources must be clarified.

4. Any transfer guidelines must clarify who is responsible and pays for transportation when it is a related service for a special education student. In this situation, transportation must be provided as part of FAPE at no cost to the parent.

5. Other special education issues that must be addressed for transfer students include extended school year (who makes decisions? who has responsibility to provide and pay?) graduation requirements (which district issues a diploma? whose graduation requirements are used?), IDEA required education to age 21 (who is responsible for the extended education?)

NOTE: Summary judgment was granted to Special School District of St. Louis County in the Breitenfeld case, ruling that the district of residence retained responsibility for FAPE under IDEA. It is unclear how this court decision would be applied to other transfer situations.