



Key Message

Highly mobile children, including military children, are more likely to experience recurring educational disruptions and challenges, particularly those who need access to special education and related services. States can assist by streamlining processes to ensure timely establishment of comparable special education services upon relocation and reducing burdens associated with due process proceedings.

Analysis

Many military children with special education needs are disadvantaged in accessing needed services in a timely manner due to the frequency with which their families move. Children from military families change location, on average, every two to three years. States have enacted improvements to state education statutes to build upon existing requirements provided within the federal Individuals with Disabilities Education Act: <https://sites.ed.gov/idea/statute-chapter-33>; the Rehabilitation Act of 1973, Section 504: <https://www2.ed.gov/policy/speced/reg/narrative.html>; and Americans with Disabilities Act of 1990, Title II: <https://www2.ed.gov/about/offices/list/ocr/disabilityoverview.html>.

- **Minimizing delays:**

1. **Timeliness:** States are requested to add language to their state statutes requiring the immediate provision of comparable services upon a student's transfer from another school system. They also require the development, adoption and implementation of either the existing individualized education plan or individualized family service plan, or a new IEP or IFSP, within 30 calendar days of registration in the new school district, even if that move occurs during the summer recess or intermediate period.
2. **Advance enrollment:** States with advance enrollment provisions for military connected children are encouraged to put in place specific procedures to identify if a child is transferring with a Section 504 plan, IEP or IFSP (transfer of records, needed evaluations, meetings) to ensure comparable services are in place when the child arrives: <https://statepolicy.militaryonesource.mil/emeritus-status-tracker/advance-enrollment>.
3. **Parent-to-parent programs:** Providing support to families impacted by a disability is a research-based prevention practice. States encouraging parent-to-parent programs to focus on the unique issues of military families and other highly mobile families can increase the likelihood of a successful transition.

- **Reducing burdens during proceedings:**

1. **Enhancing parental consent:** States can strengthen the opportunities for parents to participate in decision-making regarding any potential changes to their children's educational program by requiring enhanced parental consent prior to taking any significant actions.



2. **Shifting burden of proof:** When due process hearings take place, in general, the party that requests the hearing (most often the parents) will have the burden of proving their case. States can reassign the burden of proof from parents to school districts.
3. **Expert witness fees:** When a hearing officer finds in favor of a family at due process, states can reduce financial burdens for families by enacting provisions to reimburse them for the cost of their expert witnesses.

Best Practices

- **Minimizing delays**

1. **Timeliness**

New Jersey Administrative Code 6A, Chapter 14, Subchapter 4

<https://www.state.nj.us/education/code/current/title6a/chap14.pdf>

"1. For a student who transfers from one New Jersey school district to another New Jersey school district, the IEP shall be implemented as written if the parents and district board of education agree. If the appropriate district board of education staff do not agree to implement the current IEP, the district board of education shall conduct all necessary assessments and, within 30 days of the date the student enrolls in the school district, develop and implement a new IEP for the student.

2. If the student transfers from an out-of-State school district, the appropriate district board of education staff shall conduct any assessments determined necessary and, within 30 days of the date the student enrolls in the school district, develop and implement a new IEP for the student.

3. The appropriate district board of education staff shall take reasonable steps to promptly obtain the student's records, including the current IEP and supporting documentation, from the previous school district in accordance with N.J.A.C. 6A:32. The school district in which the student was previously enrolled shall take reasonable steps to promptly respond to all requests for records of students transferring from one district board of education to another district board of education."

2. **Advance enrollment**

In accordance with recent policy guidance (https://sites.ed.gov/idea/idea-files/letter-to-state-directors-of-special-education-on-ensuring-a-high-quality-education-for-highly-mobile-children-november-10-2022/#_ftn4) provided by the U.S. Department of Education, Office of Special Education Programs, the Defense-State Liaison Office recommends that states that have enacted "advance enrollment" or "remote enrollment" policies allowing military children to enroll preliminarily in a school and/or programs prior to arrival in the state pending a military reassignment, add language to their statutes explicitly including students with special education needs.

**Suggested language:**

To avoid undue delays for transferring military children with disabilities in receiving timely comparable special education services and/or accommodations, a school district shall promptly coordinate with a pupil's parents and previous school district upon that pupil's application for enrollment pursuant to this section.

3. Parent-to-parent programs**Evidence-based practice**

<https://www.p2pusa.org/parents>

Many states already have a parent-to-parent program to support individuals with disabilities. States, school districts and installations can work together to encourage these organizations to support highly mobile families, including military families, assisting with special educational needs and making a successful transition more likely.

• Reducing burdens during proceedings**1. Enhancing parental consent****Virginia Administrative Code, Title 8, Agency 20, Chapter 81, Section 170**

Special education programs for children with disabilities in Virginia

<https://law.lis.virginia.gov/admincode/title8/agency20/chapter81/section170>

"E. Parental consent.

1. Required parental consent. Informed parental consent is required before:

- a. Conducting an initial evaluation or reevaluation, including a functional behavioral assessment if such assessment is not a review of existing data conducted at an IEP meeting; (34 CFR 300.300(a)(1)(i))
- b. An initial eligibility determination or any change in categorical identification;
- c. Initial provision of special education and related services to a child with a disability; (34 CFR 300.300(b)(1))
- d. Any revision to the child's IEP services;
- e. Any partial or complete termination of special education and related services, except for graduation with a standard or advance studies diploma;
- f. The provision of a free appropriate public education to children with disabilities who transfer between public agencies in Virginia or transfer to Virginia from another state in accordance with 8VAC20-81-120;
- g. Accessing a child's public benefits or insurance or private insurance proceeds in accordance with subsection F of this section; and (34 CFR 300.154)
- h. Inviting to an IEP meeting a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services. (34 CFR 300.321(b)(3))"



2. Shifting burden of proof

New Jersey Revised Statutes

Title 18A – Education, Chapter 46-1.1 (2021)

Burden of proof, production on school district relative to special education due process hearings.

<https://law.justia.com/codes/new-jersey/2021/title-18a/section-18a-46-1-1>

“1. Whenever a due process hearing is held pursuant to the provisions of the “Individuals with Disabilities Education Act,” 20 U.S.C. s.1400 et seq., chapter 46 of Title 18A of the New Jersey Statutes, or regulations promulgated thereto, regarding the identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action, of a child with a disability, the school district shall have the burden of proof and the burden of production.”

3. Expert witness fees

Maryland House Bill 1237, Chapter 708, Section 8-413 (2023)

Special Education - Judicial Actions - Attorney's Fees and Related Costs

https://mgaleg.maryland.gov/2023RS/Chapters_noIn/CH_708_hb1237t.pdf

“(L) (1) THE COURT MAY AWARD REASONABLE ATTORNEY’S FEES AND RELATED COSTS, INCLUDING EXPERT WITNESS FEES AND COSTS, TO THE PARENT OF A CHILD WITH A DISABILITY WHO IS A PREVAILING PARTY IN ACCORDANCE WITH THIS SUBSECTION.”