

## The Military Child: Law + Resources

### Comparable IEP - United States Code, Code of Federal Regulations, Federal Register

#### 20 USC § 1414(d)(2)(C)

(C) Program for Children Who Transfer School Districts.

(i) In General.

(I) Transfer within the Same State. In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services **comparable** to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

(II) Transfer Outside State. In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services **comparable** to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

#### 34 CFR § 300.323(f)

(f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services **comparable** to those described in the child's IEP from the previous public agency), until the new public agency—

(1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.

#### Commentary in the August 14, 2006 issue of the Federal Register at page 46681

**Comment:** Several commenters requested that the regulations clarify the meaning of “comparable services.”

**Discussion:** We do not believe it is necessary to define “comparable services” in these regulations because the Department interprets “comparable” to have the plain meaning of the word, which is “**similar**” or “**equivalent**.” Therefore, when used with respect to a child who transfers to a new public agency from a previous public agency in the same State (or from another State), “comparable” services means services that are “similar” or “equivalent” to those that were described in the child's IEP from the previous public agency, as determined by the child's newly designated IEP Team in the new public agency.

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### Determination of Eligibility for Special Ed services - United States Code (IDEA 2004) 20 USC § 1414(d)(2)(C)

Timelines to determine a child's eligibility vary around the country. The federal law, IDEA 2004, about evaluation procedures at 20 USC § 1414(a)(1)(C)(i)(I) states that:

- (i) In General. Such initial evaluation shall consist of procedures—
  - (I) to determine whether a child is a child with a disability **within 60 days** of receiving parental **consent** for the evaluation, **or**, if the State establishes a time-frame within which the evaluation must be conducted, within such timeframe; . . .

In other words, the evaluations and the determination of eligibility are to be completed within 60 calendar days of receiving consent, unless a state has a different timeline in their own regulations. The timelines can be as short as 45 calendar days (NH) and as long as 60 school days (FL). An oral request for an evaluation is legally insufficient. Consent starts the countdown clock. The request and the consent should be in writing. If something is not in writing, it was never said.

To find your state's special ed regs and to find the regs of the new PCS state, in Google, simply insert "statesname special education regulations" and 95% of the time, Google will take you to either that State's Department of Education website special ed regs page or to their special education webpage which has the link to the state regs.

### IEP for Student Transferring into a DoDEA School Department of Defense Instruction 1342.12 Enclosure E4.6

E4.6.1. When a student transfers to a DoD school with a current IEP from a non-DoD school, the CSC shall convene promptly an IEP meeting to address eligibility and special education services (as described in sections E4.3. and E4.4.). The CSC may:

E4.6.1.1. Accept the child's current IEP by notifying and obtaining consent of the parents to use the current IEP and all elements contained in it.

E4.6.1.2. Initiate a CSC meeting to revise the current IEP, if necessary.

E4.6.1.3. Initiate an evaluation of the child, if necessary.

E4.6.2. When a student with a current IEP transfers from one DoD school to another, the CSC shall accept the child's eligibility and current IEP by notifying and obtaining consent of the parents to use the current IEP and all elements contained in it.

Unlike transfer between civilian schools, the incoming IEP child into a DoDEA school from a civilian school does not have the legal right to a "comparable IEP." It is my understanding that DoDEA instructs their staff to apply the "comparable IEP" concept. In the civilian school, if a parent believes that their child's IEP is not appropriate, not being implemented, or has other issues, the parent has the right to either request a special education due process hearing or, pursuant to 34 CFR § 300.151-153, simply file a complaint with the State Educational Agency. The DoDI's do provide for a due process hearing, **but do not provide** a similar, and much less costly, "state" complaint mechanism. DoDI 1342.12 is in revision and the military parent should lobby for inclusion of both "comparable IEPs" and a "complaint" process akin to that provided to the parents of child with a disability who attends a public school.

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### **NDA Section 586 - Report on Enhancing Benefits Available for Military Dependent Children with Special Education Needs.**

(a) Report Required. Not later than September 30, 2011, the Secretary of the Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report describing the needs of military families with children with special education needs and evaluating options to enhance the benefits available to such families and children under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) in meeting such needs.

(b) Consultation. The Secretary of Defense shall prepare the report in consultation with the Secretary of Education.

(c) Elements. In preparing the report, the Secretary of Defense shall -

(1) identify and assess obstacles faced by military families with children with special education needs in obtaining a free appropriate public education to address such needs;

(2) identify and assess evidence-based research and best practices for providing special education and related services (as those terms are defined in section 602 of the Individuals with Disabilities Education Act [20 U.S.C. 1401]) for military children with special education needs;

(3) assess timeliness in obtaining special education and related services described in paragraph (2);

(4) determine and document the cost associated with obtaining special education and related services described in paragraph (2);

(5) assess the feasibility of establishing an individualized education program for military children with special education needs that is applicable across jurisdictions of local educational agencies in order to achieve reciprocity among States in acknowledging such programs;

(6) identify means of improving oversight and compliance with the requirements of section 614 of the Individuals with Disabilities Education Act (20 U.S.C. 1414) relating to a local educational agency supporting an existing individualized education program for a child with special education needs who is relocating to another State pursuant to the permanent change of station of a military parent until an individualized education program is developed and approved for such child in the State to which the child relocates;

(7) assess the feasibility of establishing an expedited process for resolution of complaints by military parents with a child with special education needs about lack of access to education and related services otherwise specified in the individualized education program of the child;

(8) assess the feasibility of permitting the Department of Defense to contact the State to which a military family with a child with special education needs will relocate pursuant to a permanent change of station when the orders for such change of station are issued, but before the family takes residence in such State, for the purpose of commencing preparation for education and related services specified in the individualized education program of the child;

(9) assess the feasibility of establishing a system within the Department of Defense to document complaints by military parents regarding access to free and appropriate public education for their children with special education needs;

(10) identify means to strengthen the monitoring and oversight of special education and related services for military children with special education needs under the Interstate Compact on Educational Opportunities for Military Children; and

(11) consider such other matters as the Secretary of Defense and the Secretary of Education jointly consider appropriate.

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## Military Specific Websites

**Wrightslaw's Department of Defense page** - [www.wrightslaw.com/info/dod.index.htm](http://www.wrightslaw.com/info/dod.index.htm)

**DoDEA** (Department of Defense Education Activity) - includes links to special education resources and to DoDI 1342.12 and DoDEA Regulation 2500.13-G - [www.dodea.edu](http://www.dodea.edu)

**Defense Office of Hearings and Appeals** - adjudicates DoDEA due process hearings. DP decisions - [www.dod.gov/dodgc/doha/sepcases.html](http://www.dod.gov/dodgc/doha/sepcases.html)

**MilitaryHOMEFRONT** is the Department of Defense website for official Military Community and Family Policy (MC&FP) program information, policy and guidance. Insert "special needs" into their search engine - [www.militaryhomefront.dod.mil](http://www.militaryhomefront.dod.mil)

**Military K-12 Partners** is a DoDEA Educational Partnership Program. On the front page of their website, they provide links to directories of the School Liaison Officers (SLO) for each branch of the Armed Forces - [www.militaryk12partners.dodea.edu/index.cfm](http://www.militaryk12partners.dodea.edu/index.cfm)

**STOMP** (Specialized Training of Military Parents) - "STOMP is the only National Parent Training and Information Center for military families providing support and advice to military parents without regard of the type of medical condition their child has." Has a great listserv for military parents - [www.stomproject.org](http://www.stomproject.org)

**Military Child Education Coalition** (MCEC) - MCEC's work is focused on ensuring quality educational opportunities for all military-connected children affected by mobility, family separation, and transition - [www.militarychild.org](http://www.militarychild.org)

**National Military Family Association** (NMFA) - Advocate for military families on a variety of topics, including education - [www.militaryfamily.org](http://www.militaryfamily.org)

**Military Interstate Children's Compact Commission** - The compact addresses key educational transition issues encountered by military families including enrollment, placement, attendance, eligibility and graduation - [www.mic3.net](http://www.mic3.net)

**American Bar Association** - "connects active-duty military personnel and their families (E-6 and below) to free legal assistance for civil legal issues beyond the scope of services provided by a military legal assistance office." - [www.abanet.org/legalservices/lamp/](http://www.abanet.org/legalservices/lamp/) + [www.militaryprobono.org](http://www.militaryprobono.org)

**Military OneSource** - provides Master's level consultants available for free, by phone or online, for military service members and their families. The service is private and confidential - [www.militaryonesource.com](http://www.militaryonesource.com)

### Directory of School Liaison Officers

Air Force	<a href="http://www.militaryk12partners.dodea.edu/docs/slo_airforce.pdf">www.militaryk12partners.dodea.edu/docs/slo_airforce.pdf</a>
Army	<a href="http://www.militaryk12partners.dodea.edu/docs/slo_army.pdf">www.militaryk12partners.dodea.edu/docs/slo_army.pdf</a>
Marines	<a href="http://www.militaryk12partners.dodea.edu/docs/slo_marines.pdf">www.militaryk12partners.dodea.edu/docs/slo_marines.pdf</a>
Navy	<a href="http://www.militaryk12partners.dodea.edu/docs/slo_navy.pdf">www.militaryk12partners.dodea.edu/docs/slo_navy.pdf</a>