



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

October 23, 2019

Dear XXXXXXXXX:

This letter addresses your correspondence to me regarding the provision of compensatory education after a family relocates to a new State. Specifically, in a XXXXXXXXX Complaint Resolution Report, the New Mexico Public Education Department (NMPED) ordered compensatory services on your child's behalf due to a finding of a denial of a free appropriate public education (FAPE). As stated in your letter, at that time you resided in New Mexico; however, your family would be moving to a different State. You estimate that your child will continue to be owed compensatory service hours after your family moves and ask whether your child will be able to receive the remainder of her compensatory services after your family relocates. We address your question below.

We note that section 607(d) of the Individuals with Disabilities Education Act (IDEA) prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. This response represents an interpretation by the U.S. Department of Education of the requirements of IDEA in the context of the specific facts presented and does not establish a policy or rule that would apply in all circumstances.

The IDEA regulations require each State educational agency (SEA) to adopt procedures for resolving complaints filed by an organization or individual, including those from another State, alleging that a public agency has violated a requirement of Part B of the Act or the Part B regulations. 34 C.F.R. § 300.151(a)(1). In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address the failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and the appropriate future provision of services for all children with disabilities. 34 C.F.R. § 300.151(b).

Once the SEA issues a written decision in response to a State complaint, the SEA, consistent with its general supervisory and monitoring responsibilities, must ensure that the public agency involved in the complaint implements the decision in a timely manner. 34 C.F.R. §§ 300.149 and 300.600. The State's complaint procedures must include procedures for effective implementation of the SEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance. 34 C.F.R. § 300.152(b)(2).

To ensure corrective action and pursuant to its general supervisory and monitoring responsibilities in 34 C.F.R. §§ 300.149 and 300.600, the SEA must inform the public agency

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that is involved in the complaint of any findings of noncompliance and the required corrective action. The SEA also must ensure that the corrective action is completed as soon as possible and within the timeframe specified in the SEA's written decision, and in no case later than one year of the State's identification of the noncompliance. 34 C.F.R. § 300.600(e). Based on these requirements, a State's responsibility to ensure implementation of a final decision in a State complaint resolution generally would continue until the ordered corrective action has been implemented. We understand that in some cases this will be a fact specific determination. For example, if an SEA has ordered an LEA to develop a new IEP for a child with a disability and the child and parents move to a different State, the LEA in the State from which the child's family has moved would not need to develop a new IEP, because the new LEA in the new State would be responsible for developing and implementing the IEP for an eligible child with a disability. See 34 C.F.R. § 300.323 (a) and (f).

Therefore, if an SEA's complaint resolution decision has ordered relief (e.g., compensatory education) that can reasonably be implemented in a new State and the parent does not reject the remaining compensatory services, the SEA must ensure the decision is implemented in the new State.¹

By copy of this letter, I am informing Deborah Clark, Director of Special Education at the NMPED, of your inquiry and the Office of Special Education Programs' response. If you have any further questions, please do not hesitate to contact Lisa Pagano at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

Laurie VanderPloeg
Director
Office of Special Education Programs

Cc: Deborah Clark

¹ We note that the only federal court of appeals decision on this issue specifically held that "a claim for compensatory education is not rendered moot by an out-of-district move even if that move takes the child out of state." See *D.F. v. Collingswood Borough Bd. of Educ.*, [694 F.3d 488, 498-499](#) (3d Cir. 2012) (noting ways to provide compensatory education once a child has moved, including payment to the new school district or a contract with a local provider). See also, *Independent School District No. 284, Wayzata Area Schools, Wayzata, Minnesota v. A.C., by and Through Her Parent, C.C.*, 258 F.3d 769 (8th Cir. 2001) (claim for compensatory education not rendered moot by out-of-district move).