MILITARY CHILDREN WITH DISABILITIES
IDEA BARRIERS TO MILITARY FAMILIES
WHO MOVE FREQUENTLY.

There are an estimated 170,000 military children with disabilities. Their educations suffer, and they often face increased barriers to exercising their rights due to moves every 12-36 months. New school districts often reduce services, knowing that families will move and have little recourse. It can take at least 7 months to tee up a due process case, often longer, and the case becomes moot when the family moves. An upcoming NCD study is expected to show families face problems with transitions, inadequate evaluations, inadequate IEPs, and inadequate services when they move. **The problems below also affect children in foster families or the growing class of children moving due to economic circumstances (foreclosure, parents follow jobs, etc.)**

IEPs Are Not Transferred, and Services Are Often Cut. IDEA 2004 only requires the new LEA to provide "comparable" services and FAPE until an evaluation is performed and a new IEP is written. *20 U.S.C. 1414 (d)(2)(C)(i)(II).* (1) "Comparable" is often interpreted to permit inferior services and substantial changes to an IEP. But Regulatory Commentary states the Commentary was intended to mean "similar or equivalent" to the old IEP, 71 Fed Reg. 46681 (2006), and this part of the statute was rewritten to use ED previous interpretations for interstate moves. (2) One part of this change to the initial proposed DeWine-Murray amendment was to remove an explicit choice of using the prior IEP for interstate moves. Instead, the statute is worded to appear to require a new evaluation and new IEP. (3) Intrastate standard also changed from implementing the old IEP to comparable services until the old IEP is adopted or a new one written.

> **Solution: Implement the prior IEP pending decision on new IEP, but consider implications when the prior IEP is worse than what current district might offer. Amend statute or take other action to make clear comparable means the similar or equivalent.** Some to advocate for a "national IEP" that a military child can take from state to state; this may entail substantial changes in IDEA's structure of state responsibility for eligibility and FAPE determinations.

Unnecessary Evaluations Create Substantial Delays in Getting Services and New IEP. IDEA 2004 is worded to almost require a new evaluation when child moves. The comparable services are implemented "until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency." *1414 (d)(2)(C)(i)(II).* The initial proposed amendment had been silent on evaluation. The effect is to encourage more evaluations (also increasing school district costs) and further delaying services. States can use a 60 day evaluation deadline or set their own, some of which are 60 school days (roughly 12-14 weeks), *1414(a)(1)(C).* After the evaluation, there is an eligibility determination (another delay) and then 30 days to write an IEP, *34 CFR 300.323(c).* Thus, the new IEP may not be written until 104-120 days (4 months!) or longer after the child enters school. If there are differences to negotiate, this is often delayed further.

> **Solution: While state eligibility standards might differ for some disabilities (e.g. SLD), the evaluation itself does not have to be redone.** The statute should require the use of assessments previously completed within the year unless the school and parent agree otherwise, similar to *1414(a)(1)(D)(2)*, the reevaluation standard. This would also save districts money.

Moving Mid-Evaluation: Children may move during their initial evaluation or triennial. The final IDEA 2004 language essentially permits states to start the timeline over when the child moves in. *1414(a)(1)(C)* would appear superficially to require the timeline to begin from when the child is first evaluated in the old district, but the language in *(d)(2)(C)(i)(II)* is often interpreted to require new evaluations in the new district, with timelines beginning again.

> **Solution:** Restore original amendment that timelines should be computed from the day the child was first referred to an LEA for evaluation.

Language Limited to "School Year." Even the weak protections in the statute are limited to moves during the "school year." Because the large majority of military families move during the summer, LEAs refuse to implement them. This language was likely inadvertent without awareness of its impact.

Solution: Expand protections beyond School Year to parents moving at any time.

Moves Make It Difficult to Improve Services. At times, a child may need new or stronger services. School districts may refuse to provide them because they know the family will move soon. The clock simply ticks away while parents try to negotiate with an unwilling school district.

Frequent Moves Exacerbate Problems, Leaving Parents Without Recourse. School districts know that military families will move soon and be unable to access the hearing process, creating incentives to deny services and refuse negotiations. Since 2004, more courts have held that once the child leaves the district, the parent's IDEA claim is moot, although some permit a limited compensatory education claim. But litigating across country is costly. The clock ticks quickly on the military family, coping with deployments, trying to compromise with the school district and work things out at the IEP level, and then trying to hire an attorney--if they can afford them. After filing, there is a 30 day wait for the resolution session and at least 45 days until the hearing decision. Parents who try to avail themselves of the IEE or Mediation face even more delays. Because the old IEP is no longer in effect, the child has no stay put rights, giving districts strong incentives to weaken services and fight rather than compromise. Low-level enlisted personnel often lack the training, education, and self-help skills to advocate effectively, and likely need assistance.
Solution: This has led to an emphasis on seeking increased advocacy and even legal support by some advocates, so that parents have stronger support at the IEP level.

The Military Interstate Compact is Not a Solution. The compact, adopted by 30 states, is designed to harmonize differences between the states on issues like graduation standards or course credit. The compact is between states. The compact does not have the authority to override IDEA 2004's statutory provisions which are largely responsible for the educational problems. Nor should it, as this could lead to overrides that go against children and for which there would be no recourse. The Compact also has does not appear to be able to resolve IDEA issues, which are not disputes between states over state-level policies, but disputes between individual local districts seeking to change services for individual children.