Parentally-Placed Private School Children with Disabilities
Clarification Document

If questions arise from this document, the district may choose to seek legal advice.

Assumptions

This document is intended to assist a district in understanding the requirements of providing equitable services to parentally-placed private school children with disabilities. Under the Individuals with Disabilities Education Act (IDEA), the district has an obligation to provide parentally-placed private school children with disabilities an opportunity for equitable participation in the services funded by the proportionate share funds. Equitable participation must be provided through a services plan, which is determined after timely and meaningful consultation with private school representatives and parents of private school children with disabilities.

There is a difference in services between parentally-placed private school (non-profit) children with disabilities and children in public schools. Public school children are assured a free appropriate public education (FAPE). Parentally-placed private school children have no individual right to service under IDEA.

When the phrase ‘private school’ is used throughout this document, it refers to a private non-profit school, including religious and home school. In order to be considered non-profit, the school must be considered an elementary school as defined in 34 CFR 300.13 or secondary school as defined in 34 CFR 300.36. In 34 CFR 77.1(c), non-profit, as applied to an agency, organization or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity. The school must also meet the following criteria:

- an adopted curriculum, including scope and sequence;
- a formal review and documentation of student progress and gains;
- teaching strategies and methods; and
- targeted instruction based on identified student needs.

TAC 89.1096(a)

The following applies to home school children only. “Students should be disenrolled by school officials when they receive notice either by signing withdrawal forms or a letter of withdrawal. It is not necessary for the parents to make a personal appearance with school officials or present curriculum for review. School districts which become aware of a student who is potentially being home schooled may request in writing a letter of assurance from the parents of the student regarding their intention to home school the student. This letter may require assurances that the home school curriculum is designed to meet basic education goals including reading, spelling, grammar, mathematics and study of good citizenship. Please note that a letter of this type is not required each year.” (Source: The Texas Education Agency (TEA) Commissioner’s To the Administrator Addressed Letter, April 8, 2013, titled Home Schools)

Since the letter of assurance is a responsibility of the district, the special education department may choose to discuss with central office administration the process of collecting letters of assurance in its district.
Child Find

Each district must locate, identify and evaluate all children with disabilities who are voluntarily enrolled by their parents in private (including religious and home) elementary, and secondary schools located in the school district served by the local education agency (LEA) [34 CFR § 300.131(a)]. These are children who are voluntarily enrolled by their parents in private schools and were not referred to private school by the district in order to receive free appropriate public education (FAPE). The district cannot require the private school to implement a response to intervention process before evaluating parentally-placed private school children. (Source: Office of Special Education Programs (OSEP) Frequently Asked Questions (FAQ), 2011, B-3)

The district response of “I don’t know if we have any private school children” may reflect inadequate Child Find efforts. Parentally-placed children with disabilities do not have an individual right to services they would receive if they were enrolled in a public school. Since the district must be ready, willing, and able to serve parentally-placed private school children, a Child Find tracking system for these children is extremely important.

The district where the private school is located is responsible for conducting Child Find for parentally-placed private school children. After timely and meaningful consultation with private school representatives, the district must conduct a thorough and complete Child Find process. (Source: OSEP FAQ, 2011, B-1)

The only responsibility districts have to for-profit private school children is evaluation for special education eligibility.

It is possible for a parent to request evaluations from the district where the private school is located as well as the district where the child resides. OSEP discourages this practice. However, if the parent chooses to request evaluations from the district responsible for providing FAPE and from another district that is responsible for considering the child for the provision of equitable services, both districts are required to conduct an evaluation. (Source: OSEP FAQ, 2011, B-4)

*A State determines which public agency is responsible for conducting Child Find under 34 CFR 300.111 for children suspected of having a disability attending for-profit private schools. Generally, this agency is the district in which the child resides. (Source: OSEP FAQ, 2011, O-1)

The district must complete the Child Find process by determining eligibility during an Admission, Review, and Dismissal (ARD) meeting. The IDEA regulations are silent regarding when the ARD meeting ends and the Individual Services Plan (ISP) meeting begins. A district may choose to consult with its legal counsel for advice regarding its process.

The IDEA does not specify how often a services plan must be updated. The IDEA regulations are specific that an individualized education program must be updated at least annually. The Department of Education suggests that a services plan be updated not less than annually to determine if the annual goals are being achieved and to be revised as needed. (Source: OSEP FAQ, 2011, E-1)

The district where the private school is located is responsible for conducting re-evaluations for children with disabilities located at the private school. The district follows the same regulations for re-evaluating private school children with disabilities as outlined for public school students with disabilities. (Source: OSEP FAQ, 2011, B-8).
IDEA Reporting Requirements

States are required to annually report to OSEP child count information, including the number of parentally-placed private school children with disabilities.

Currently, parentally-placed private school students are recorded on the 101 STUDENT DATA – DEMOGRAPHIC record, E1000 STUDENT ATTRIBUTION CODE as ‘12’ for private school. Parentally-placed private school children with disabilities (ages 3-21) who receive special education and/or related services through an individual services plan should be included. Dually enrolled students ages 3-4 are not included in this count.

Following is the data on parentally-placed private school children, found in PEIMS, that is required to be maintained and reported to the TEA through the eGrant application in the spring of every year. [34 CFR 300.133(c)]

1. Number of children evaluated
2. Number of children determined to be children with disabilities
3. Number of children served

This data is not used as part of the proportionate share calculation.

IDEA Consultation Requirements

The private school consultation must be timely and meaningful and it must include private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services.

Timely consultation occurs before the district makes any decisions. Therefore, the consultation must take place prior to the submission of the eGrant application for the coming school year. A meaningful consultation means that all parties must be given a genuine opportunity to express their views, and their views must be seriously considered. It is not a unilateral offer without opportunity for discussion; however, the district has the final decision.

- **Required Consultation Topics (34 CFR § 300.134)**
  - **Child Find Process** – Discussion of the Child Find process must include how parentally-placed private school children suspected of having a disability can participate equitably and how parents, teachers, and private school officials will be informed of the Child Find process. This means the private school representatives must know how to access information on the Child Find process.
  - **Proportionate Share of IDEA Funds** – The consultation should discuss how the proportionate share is calculated and how it will be expended.
  - **Consultation Process** – The district will discuss how the consultation will operate throughout the year to ensure parentally-placed private school children with disabilities can meaningfully participate; how the district will consult with appropriate representatives of parentally-placed private school children with disabilities before the district makes any decisions that affect the opportunities for those children and how the district will give the appropriate representatives a genuine opportunity to express their views regarding each matter.
• **Provision of Special Education and Related Services** – Districts must discuss the how, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities. The discussion must include:
  - types of services that will be provided, including direct and alternate service delivery mechanisms;
  - how special education and related services will be apportioned if funds are insufficient to serve all children; and
  - how and when those decisions will be made.

• **Written Explanation** – During the consultation, if the district disagrees with the opinions of the private school representatives regarding the provision of services, the district will provide a written explanation of the reasons why the district will not be providing the services, directly or through a contract.

• **Proof of Consultation** (Source: The TEA FAQ Question 4, extracted as of February 2015)
The district must receive from participating private school representatives a signed, written affirmation after timely and meaningful consultation has occurred. The Attendance and Sign-In sheet are not sufficient. If no affirmation is provided within a “reasonable period of time” after the consultation, the district forwards to the TEA a description of the attempts the district made to obtain written affirmation as well as any other information that shows meaningful consultation took place. The description should be attached as a document to the eGrant Special Education Consolidated Grant.

The district should develop procedures regarding signed written affirmation of private school consultation that work for their particular situation. Districts should keep a file on any written affirmations.

• **Private School Official Right to Complain** (Source: The TEA FAQ Question 9, extracted as of February 2015)
The private school official has the right to submit a complaint to the TEA if he or she believes the district did not engage in consultation that was timely and meaningful throughout the school year or did not give due consideration to the views of the private school officials.

• **Parent Right to File a Complaint** (Source: OSEP FAQ Question L-1)
As provided in 34 CFR 300.140(b), a parent of a child enrolled by that parent in a private school has the right to file a due process complaint regarding the Child Find requirements. The complaint must be filed with the district in which the private school is located. The district must forward a copy to the TEA. Because there is no individual right to services for parentally-placed children with disabilities there is no standing to file a due process complaint on any other grounds.
Proportionate Share

What is proportionate share?
The proportionate share is funds that each district must expend during the grant period on the provision of services to children with disabilities placed by their parents in a private school in the district boundaries, including religious and home school. Districts must calculate the proportionate share of IDEA-B Formula (224/313) and Formula Preschool (225/314). Since proportionate share is also calculated on the Formula Preschool funds (225/314), districts need to be careful how its service plan is written so the Formula Preschool funds are expended on the appropriate ages (3-5 only).

District are required by IDEA to calculate the proportionate share and expend those funds on ‘the group’ of private school children with disabilities. Parentally-placed private school children who are included in the child count the last Friday of October the previous year are ‘the group’.

Proportionate share is required to be calculated every grant year, and the proportionate share calculation is based on the tentative entitlement the district receives in the spring of each year. The district receives the maximum entitlement typically in December or January of each year. The eGrant application will automatically recalculate that amount. Districts must remember to budget the additional amount in their proportionate share budget.

The proportionate share ratio does not change if new parentally-placed children with disabilities who attend a private elementary or secondary school, including religious and home schools, are identified and located after the count date, which is the last Friday of October the previous year. Also, eligible children with disabilities who begin attending a private elementary or secondary school, including a religious or home school, after the proportionate share services have been decided have no individual right to receive proportionate share services. The children will be eligible in subsequent years if they continue to attend a private school located in the district. (Source: The TEA FAQ Question 19, extracted as of February 2015)

However, “If a parentally-placed private school child with disabilities is identified after the last Friday in October of the previous year, the district is not prohibited from using proportionate share funds to provide services for that child if the district has proportionate share funds available and the children who were included in the calculation are not adversely affected.” (Source: The TEA FAQ Question 19, extracted as of February 2015) Although this means the children are not entitled to proportionate share services until the following school year, the district may choose to serve them. The district might consider including three-and-four-year-olds who are currently not receiving services or children who fit within the existing service plan. The district may wish to include in its Operating Guidelines how it will address this situation.

“If the district does not have proportionate share funds because no parentally-placed private school children with disabilities were identified the last Friday in October of the previous year, the district is not obligated to provide special education and/or related services to a new child during the year in which there are no proportionate share funds.” (Source: The TEA FAQ Question 19, extracted as of February 2015)

Proportionate Share Calculation
The amount of proportionate share is calculated in the eGrant application when child counts are entered into the eGrant application. Therefore, the district must make sure to use the correct child counts and know where to find them. By implementing a tracking system, the district should be able to keep an accurate count of parentally-placed private school children with disabilities.
Since proportionate share is calculated for the IDEA-B Formula (224/313) and Formula Preschool (225/314), the district must know the child count for children ages 3-21 and 3-5 for both public and private elementary and secondary schools, including religious and home schools, as of the last Friday of October of the previous school year.

When the district budgets the proportionate share amount, it must use a sub-object or local option code to account for expenditures of the proportionate share.

Proportionate share is calculated in the eGrant application. However, it is very important for districts to understand exactly which children are counted so the formula is calculated accurately.

The children included in the count are only those children who were eligible as of the last Friday in October the previous year and were enrolled in a private school, including religious and home schools.

The count of private school children is the children, ages 3-21 and 3-5, enrolled in private schools located in the district, whether or not the children or their parents reside in the district. (Source: OSEP FAQ, H-1, April 2011)

**Children enrolled in a for-profit private school are not counted for the purpose of determining the proportionate share calculation and are not eligible to receive services.** (Source: OSEP FAQ, April 2011, O-1)

**Reverse Supplement/Supplant Requirement**

State and local funds may supplement proportionate share, but in no case may they supplant the proportionate share. This means a district must spend the federal proportionate share funds first. (Source: OSEP FAQ, April 2011, H-3)

A district is not required to spend state and/or local funds to supplement the services provided by the proportionate share funds. If a district chooses to spend state and/or local funds, the amount spent will count toward maintenance of effort. This could impact the district’s maintenance of effort in the future, should the district decide not to supplement with state and/or local funds. Beware: the federal proportionate share must be spent prior to supplementing with state and/or local funds.

**Carryover of Proportionate Share Funds (Source: The TEA FAQ, Question 20, extracted as of February 2015)**

The IDEA regulations require that a district expend the total amount budgeted for proportionate share. If a district fails to expend the entire amount for a given year, the district must obligate the remaining funds for a carryover period of one year. At the end of the carryover period, assuming the district is in compliance with Child Find, consultation, and other IDEA equitable services requirements, the district may use the unexpended funds to pay for other allowable IDEA costs. This means, a district can spend the remaining carryover funds on the entire special education program. The TEA recommends a district does not do this until about three months prior to the end of the grant year.

If the district spends the carryover proportionate share funds on the entire special education program, it must be able to document that it had on-going consultation with the private school representatives and attempted to spend the entire carryover amount on eligible children who were parentally-placed in a private elementary or secondary school, including religious and home schools.
Use of Proportionate Share Funds (Source: OSEP FAQ, April 2011, Sections C-2; D-4; F-1; I)

The district plans, designs, and implements the services and maintains control of all finances.

Unallowable Expenditures

- Remodeling, minor repairs, or construction of private school facilities
- Child Find activities

Allowable Expenditures

- Equipment and materials (Source: OSEP FAQ, April 2011, Section I, D-4)
  - Must be used for IDEA purposes only
  - Must be able to be removed without remodeling the private school
  - Must be removed once no longer needed for the services
  - Must be removed to avoid unauthorized use of the equipment
  - Must be secular, neutral, and nonideological

- Training for private school teachers and other private school personnel

- Consultation services
  - Services may be provided by the district or a private company
  - United States Department of Education believes that unless there is a compelling rationale for these services to be provided off-site, the services should be provided on-site at the child’s private school so as not to disrupt the child’s educational experience. (Source: OSEP FAQ, 2011, Section F-1)

- Personnel (Source: OSEP FAQ, April 2011, Section C-2)
  - Public school personnel may provide the services on-site or at the public school. The public school employee may be required to keep time and effort. The time the employee spends providing proportionate share services must be documented and attributed to expenditures in the proportionate share funds. Consult the district policies regarding extra duty pay. The documentation and amount paid is different for each district.
  - Private school personnel may also provide the services. The private school employee must provide those services after normal school hours and perform them under the supervision and control of a public school employee. When the private school employee provides the services treat them as a contract employee. The district should follow the same documentation process as for other contract employees.

- Transportation
  - If it is necessary for the child to benefit from or participate in the services provided under the private school provisions, the district must provide a parentally-placed private school child with a disability transportation from the child’s school or the child’s home to a site other than the private school; and from the service site to the private school or to the child’s home, depending on the timing of the services. (Source: OSEP FAQ, 2011, F-3)
Implementation - Operating Guidelines

The district needs to develop or possibly revise its Operating Guidelines. The district also needs to provide training to an array of staff on the Operating Guidelines. Some of the staff who need to be trained are principals, assessment staff, PEIMS clerks, teachers, campus and special education secretaries, parent liaisons, and coordinators. Individual districts must determine if additional staff should be trained.

Below are some issues to consider when writing or revising Operating Guidelines:

- Definition of parentally-placed private school children with disabilities
- How the district will determine non-profit/for profit status
- Child Find process
- How Child Find must ensure equitable services; no right to a free appropriate education
- Proportionate share – how it is calculated and expended as well as how the carryover funds will be treated
- Consultation process
- Provision of special education and related services
- Menu of services
- Which children are eligible for services – include children identified who were not included in the October count and children transferring into the district
- Development of services plan
- Content of an ISP, meeting regarding ISP, and what needs to happen at the meeting as well as who needs to be invited
- Explanation of which district is responsible for evaluation and services
- Process for on-going consultation
- Control of property and equipment
- Private school officials’ right to complain
- Process for accepting outside evaluations
- Process for conducting an Independent Education Evaluation (IEE)
- Process for how proportionate share will be apportioned
- How the Child Find process will be explained to parents
- When the district will conclude the ARD meeting and initiate the ISP meeting
- How the district will document the parents’ decision to accept or decline a services plan
- How the district will document the parent’s intent to keep their child enrolled in the private school (see the TEA FAQ 1)
- How the district will handle advising the parents on how to contact the district of residence

Possible Timeline

- Spring
  - Initial consultation and development of services plan prior to submission of eGrant application
  - Gather data on the number of eligible children attending district and private schools located in the district
  - Select children who will participate in proportionate share services for the subsequent year
  - Begin to develop services plan(s) for the subsequent year
  - Conduct Child Find activities
• Summer
  o On-going consultation with private school representatives and parents
  o Conduct Child Find activities
  o Review Operating Guidelines
• Fall
  o On-going consultation with private school representatives and parents
  o Conduct Child Find activities
  o Implement ISP

Resources Reviewed

2. The TEA FAQ for parentally-placed (extracted spring 2015)
3. The TEA FAQ State Performance Plan (SPP) Indicator 11, March 2015
4. The TEA Instructions SPP 11, March 2015
5. Secretary of State website, December 2014
6. The TEA To The Administrator Addressed (TAA) Letter, April 2013
7. The OSEP FAQ for parentally-placed, 2011
8. TAC 89.1096, November 2007
9. 34 CFR 77.1(c); 300.36; 300.112; 300.131; 300.134; 300.622, IDEA 2004
10. Leeper Decision, June 1994