



Information UPDATE

Wisconsin Department of Public Instruction/Elizabeth Burmaster, State Superintendent/P.O. Box 7841/ Madison, WI 53707-7841

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TO: District Administrators, CESA Administrators, CCDEB Administrators, Directors of Special Education and Pupil Services, and Other Interested Parties

FROM: Carolyn Stanford Taylor, Assistant State Superintendent
Division for Learning Support: Equity and Advocacy

SUBJECT: Parentally Placed Private School Students with Disabilities
[This bulletin replaces bulletin 99.07.]

The Department of Public Instruction (DPI) has prepared this bulletin to address common questions about school district responsibilities under the Individuals with Disabilities Education Act (IDEA) to students with disabilities placed in private schools by their parents. This bulletin does not address the responsibilities for a student placed by a school district or other public agency in a private school.

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1. *Which school district is responsible for the requirements relating to parentally placed private school students with disabilities, the school district where the child's private school is located or the school district where the child resides?*

With the enactment of IDEA 2004 in December 2004, the responsibility for implementing the requirements for parentally placed private school students with disabilities changed from the school district where the student resides. It is now the responsibility of the school district where the student's private school is located.

2. *To which children do the IDEA requirements for parentally placed private school students with disabilities apply?*

The IDEA provisions relating to parentally placed private school students with disabilities apply to all parentally placed children with disabilities attending private elementary and secondary schools, including religious schools. A school is a "private school" if it meets the definition at section 118.165(1), Wis. Stats. A directory of private schools may be found at <http://www.dpi.state.wi.us/schlprv.html>. The provisions do not apply to children placed in a private school by a school district or other public agency.

3. *Do the IDEA requirements for parentally placed private school students with disabilities apply to children with disabilities, aged 3 through 5, enrolled by their parents in private elementary schools?*

In Wisconsin, section 115.01(2), Wis. Stats., defines the elementary grades to include four- and five-year-old kindergarten. Therefore, the IDEA requirements for parentally placed private school students with disabilities apply to students in grades K4 and K5 in private schools. A school district is responsible for child find, including evaluation, and equitable participation for students in grades K4 and K5 attending private schools in the school district.

For three-year-old children, the responsibility for child find, including evaluation, remains with the school districts where they reside. Three-year-old children continue to have individual entitlements to free appropriate public education (FAPE) from their school districts of residence.

4. *Do the IDEA requirements for parentally placed private school students with disabilities apply to children in home-based private educational programs (home schooling)?*

No. These provisions apply only to children attending private elementary and secondary schools. Under Wisconsin law, a home-based private educational program is not a private school. Therefore, the IDEA provisions relating to parentally placed private school students do not apply to children in home-based private educational programs.

5. *Do the IDEA requirements for parentally placed private school students with disabilities apply to children placed in residential care centers (RCCs)?*

With rare exceptions, children with disabilities placed in RCCs are placed and funded by counties or state agencies. They are not parentally placed. Therefore, the IDEA provisions relating to parentally placed private school students with disabilities do not apply to them. The provisions would, however, apply to a parentally placed child with a disability attending a private school operated in conjunction with an RCC.

6. *Should the school district where the private school is located and the school district of residence share information about a parentally placed private school student?*

The IDEA requires parental consent before any personally identifiable information about the student is released between the school district where the private school is located and the school district of the student's residence. If sharing information would facilitate identifying and serving the child, it may be appropriate to seek parental consent.

7. *What are the "child find" requirements for parentally placed private school children?*

Each school district must conduct activities to locate, identify, and evaluate all children with disabilities aged birth through 21 within its jurisdiction, including those attending private schools, regardless of the severity of their disabilities. These activities are known as "child find." A school district is responsible for child find activities, including individualized education program (IEP) team evaluations, for parentally placed private school students attending private elementary and secondary schools located in the school district. Evaluations of all students suspected of having disabilities, regardless of whether they are enrolled by their parents in private elementary schools or secondary schools, must be conducted in accordance with the requirements of state and federal special education law. The school district where the private elementary or secondary school is located may ensure its child find responsibilities are met by assuming the responsibility itself, contracting with another public agency, or making other arrangements.

The child find process must be designed to ensure the equitable participation of parentally placed private school students and an accurate count of them. Child find activities for private school students must be similar to those for public school students. The activities must be completed in a time period comparable to that for students attending the public schools. The school district cannot wait until child find activities for the public schools are completed before conducting child find activities in private schools. Each school district must consult with private school representatives and representatives of parents of private school students with disabilities about the child find process.

8. *What is the responsibility of the school district to conduct child find activities for parentally placed private school children who attend private schools in the district and reside outside the state?*

The school district where the private elementary schools and secondary schools are located is responsible for conducting child find, including individual evaluations, of all parentally placed private school students suspected of having a disability. This includes children from other states attending private elementary and secondary schools located in the school district.

9. *Who is responsible for paying for an IEP team evaluation of a private school student?*

The school district where the student attends a private school is responsible for conducting and paying for an IEP team evaluation of a student with a suspected disability. The district may perform the evaluation or contract for an evaluation with the student's school district of residence or other agency. The school district where the student attends a private school may not seek payment from the school district of residence for the evaluation or request the school district of residence to conduct the evaluation at its own expense.

10. *If the school district conducts an individual evaluation on a child, and the parents disagree with the evaluation and wish to obtain an independent educational evaluation (IEE), to which school district must the parents bring their request – the school district where the private school is located, or the school district where the child resides?*

Parents should file the request for an IEE with the school district that conducted the evaluation with which the parents disagree.

11. *What specific child count information must the school district maintain and report to the DPI?*

The school district must maintain in its records and provide to the DPI the number of parentally placed private school students evaluated, the number of parentally placed private school students determined to be children with disabilities under IDEA, and the number of children provided equitable services. This information is collected through the school district's Local Performance Plan (LPP).

12. *Why is it important to identify the number of parentally placed private school children with disabilities attending private schools in the school district?*

An accurate count of the number of eligible private school students enrolled by their parents in private schools located in the school district is needed to calculate the proportionate share of IDEA funds the school district must expend annually on services for parentally placed private school students with disabilities.

13. *Is the school district where the parentally placed student attends a private school required to reevaluate the student?*

Yes. Reevaluation is part of a school district's child find obligation. The child find requirements apply to parentally placed students with disabilities. Therefore, a school district must initiate a reevaluation of a private school student at least once every three years. If the school district cannot complete the reevaluation because the child's parents refuse to cooperate, the district is not required to take further action. The requirement to reevaluate includes private school students who are not receiving special education or related services from the school district. Such students need to be reevaluated for the private school child count and for funding purposes.

14. *If the parent of a parentally placed private school student refuses consent for an evaluation, may the school district use the due process procedures to override the parent's refusal?*

No. If the parent refuses to consent to the administration of tests or other evaluation materials as part of an evaluation or reevaluation, the school district may not use the due process procedures. If the parent refuses consent for testing, the school district is not required to consider the child for equitable services.

15. *In conducting evaluations of suspected children with disabilities enrolled in private schools by their parents, may a school district exclude children suspected of having certain disabilities, such as those with specific learning disabilities?*

No. The school district must identify and evaluate all private school students suspected of having a disability. School districts may not exclude from their child find activities students suspected of having certain disabilities, such as those with specific learning disabilities. The department recommends school districts and private elementary and secondary schools consult on how best to implement the state's evaluation criteria for identifying children with specific learning disabilities enrolled in private schools by their parents.

16. *What services must a school district provide to a parentally-placed private school student with a disability?*

Children with disabilities enrolled in private schools by their parents have no individual entitlement to receive some or all of the special education and related services they would receive if enrolled in a public school other than child find, which includes evaluations. A school district only must provide for the "equitable participation" of parentally placed private school students with disabilities as a group. The IDEA requires that annually a school district spend a proportionate share of IDEA funds on special education and related services for private school students with disabilities as a group. The expenditures must be consistent with the other requirements of the IDEA regulations.

After initially evaluating a student and determining the student is eligible for special education, the school district where the private school is located should explain to the parents what services are available if the student remains in the private school. If the student remains in the private school and will receive services from the school district,

the district must develop a “services plan” for the student. Also, the school district must inform the parents that the student’s school district of residence is responsible to provide the child free appropriate public education (FAPE) if the student leaves the private school and enrolls in public school. If the parent makes clear his or her intention to keep the child in the private school, the school district where the child resides need not develop an IEP and make FAPE available to the child.

17. *Which school district is responsible for determining and paying for equitable services provided to out-of-state parentally placed private school children with disabilities?*

The school district where the private elementary or and secondary schools are located, in consultation with private school officials and representatives of parents of parentally placed private school children with disabilities, is responsible for determining and paying for equitable services provided to out-of-state parentally placed private school children with disabilities. The out-of-state residents must be included in the group of parentally placed children with disabilities whose needs are considered in determining which parentally placed private school children with disabilities will be served and the types and amounts of services to be provided.

18. *May a school district meet the requirement to expend a proportionate share of funds on services for parentally placed private school students with disabilities by spending state and local funds?*

No. A school district is required to spend a proportionate share of its federal IDEA funds to satisfy this obligation. If a district uses state and local funds to provide special education or related services to parentally placed private school children with disabilities, those funds can be used only to supplement and not supplant the proportionate share of federal funds.

19. *May a school district provide additional services to parentally placed private school children in excess of the required IDEA proportionate share?*

Yes. The IDEA does not prohibit school districts from providing special education or related services to parentally placed private school children with disabilities in excess of those required by IDEA, consistent with state law or local policy.

20. *How does the school district determine the number of students with disabilities to use in calculating the proportionate share of IDEA funds it must spend?*

On the third Friday in September of each year, the school district must determine the number of parentally placed students with disabilities attending private elementary and secondary schools in the school district in two age ranges—4 through 5 and 4 through 21. The counts include both children who receive school district special education and/or related services and those who do not. Because the counts are used to determine the amount the school district must spend in the subsequent fiscal year, it is important that child find activities be designed to ensure accurate counts of students on the third Friday in September.

21. *How does a school district calculate the proportionate share of IDEA funds that must be spent on special education and related services?*

Appendix B to Part 300 - Proportionate Share Calculation explains how to calculate the proportionate share and includes an example. *Appendix B* is reprinted at the end of this bulletin. Please note that while *Appendix B* includes three-year-old children with disabilities in the school district’s count of children attending elementary and secondary private schools, in Wisconsin three-year-old children are not included. See questions 3 and 20.

22. *What expenditures can be considered when determining whether a school district has expended a proportionate share of its IDEA funds?*

Expenditures for special education and related services, including transportation, may be considered when determining whether the school district has expended a proportionate share of IDEA funds. Expenditures for child find activities, including evaluations, may not be considered.

23. *What does the school district do if it is unable to spend its entire proportionate share of IDEA funds by the end of the fiscal year?*

If the school district has not expended the entire proportionate share of IDEA funds by the end of the fiscal year, the school district must obligate the remaining funds for services for parentally placed private school students with disabilities during a carry-over period of one additional year.

24. *How does a school district make decisions about the special education services it will provide to parentally placed private school students with disabilities?*

The school district must consult in a timely and meaningful way with private school representatives and representatives of parents of parentally placed private school students with disabilities. The school district must give due consideration to their views. The school district must consult about:

- the child find process, including how parentally placed private school students suspected of having a disability can participate equitably and how parents, teachers, and private school officials will be informed of the process;
- the determination of the proportionate share of IDEA funds, including how the share was calculated;
- the consultation process with private school representatives and representatives of parents of parentally placed private school students with disabilities;
- how children identified during the year can participate in special education services;
- how, where, and by whom special education services will be provided, including the types of services (direct services and alternate service delivery mechanisms);
- how special education services will be apportioned if funds are not sufficient to serve all parentally placed private school students; and
- how, if the school district disagrees with the views of the private school officials on the provision of services or types of services (either directly or through a contract), the school district will provide private school officials a written explanation of the reasons why the school district chose not to provide services.

A unilateral offer of services by a school district with no opportunity for consultation is not adequate. Only after consulting on key issues relating to the provision of special education and related services with private school representatives and representatives of parents should the school district make its final decisions with respect to the services to be provided to eligible private school children with disabilities.

25. *What documentation of the consultation process is required?*

After consulting with representatives of private schools, the school district must obtain written affirmations signed by private school representatives. The DPI developed an affirmation form for use by school districts. It can be accessed at <http://dpi.wi.gov/sped/doc/prischaff.doc>. There is no requirement to send the signed affirmations to the DPI. However, if a private school representative does not provide the affirmation within a reasonable period of time, the school district must forward documentation of its consultation process to the Department of Public Instruction. The school district must send its LPP consultant a description of efforts to consult with the representatives of private schools. The description must include the dates of attempts to consult, the nature of the attempts, e.g., e-mail message, telephone call, and the results of each attempt or consultation.

26. *Must a parentally placed private school student with disabilities identified during the school year wait until the next school year to participate in special education services?*

If a parentally placed private school student with disabilities is identified during the school year, the school district should consider providing special education services during the same school year. Whether the child receives services in the same school year will depend upon such factors as the services the student needs and whether the school district already has expended its proportionate share of IDEA funds.

27. *Who makes the final decisions about services for private school children with disabilities?*

After consultation with private schools representatives and representatives of parents of parentally placed private school children with disabilities, the school district is responsible for making final decisions about all aspects of the services to be provided to parentally placed private school children with disabilities. However, if the school district disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the school district must provide the private school officials a written explanation of the reasons why the district chose not to accept the recommendations of the private school officials.

28. *May a representative of a private school file a complaint about the consultation process?*

A private school official has the right to file a complaint with the DPI that the school district did not engage in consultation that was meaningful and timely or the school district did not give due consideration to the views of the private school official. The private school official must provide the department the basis of the noncompliance by the school district and forward appropriate documentation to the DPI. A complaint may be sent to Carolyn Stanford Taylor, Assistant State Superintendent, Wisconsin Department of Public Instruction, P. O. Box 7841, Madison, Wisconsin 53707-7841. The school district will be required to forward appropriate documentation to the DPI. If the private school official is dissatisfied with the department's decision, the official may submit a complaint to the Secretary of the U.S. Department of Education. A complaint may be submitted by providing the U.S. Department of Education the basis of the school district's noncompliance with the private school provisions. The DPI will forward appropriate documentation to the Secretary of the U.S. Department of Education.

29. *Can a school district change the provision or types of special education services it will provide to private school children with disabilities?*

Yes. However, consultation with private school representatives and representatives of parents of private school students with disabilities must occur before the school district makes any decision affecting the opportunities of private school children to participate in special education services. If the school district disagrees with the views of the private school officials on the provision of services or types of services, the school district must provide private school officials a written explanation of the reasons why the school district chose not to accept the recommendations of private school officials.

30. *May school districts provide special education or related services to private school children at private schools?*

Decisions about where services will be provided are left to school districts, in consultation with private school representatives and representatives of parents of private school children. School districts may provide the services at private schools to the extent consistent with law, but they are not required to do so. The department encourages school districts to provide services at private schools to the extent that it is practical, so as not to disrupt the educational program of the children receiving the services.

31. *Are there precautions a school district must observe when providing special education services to religious school children?*

Yes. The school district's services must be secular, neutral, and non-ideological. The services may not supplant the private school's instruction in the core curriculum areas of reading, language arts, mathematics, social studies, science, and health. The safeguards found in the IDEA regulations at 34 CFR 300.143 (Separate classes prohibited), and 34 CFR 300.144 (Property, equipment, and supplies) must be observed.

32. *May a school district provide a parentally placed private school student related services without providing special education?*

Yes. The IDEA regulations permit a school district to provide for the participation of a private school student in any of the district's special education services. Therefore, the school district may provide related services to the student without providing special education.

33. *Is a school district required to provide transportation to a private school student with a disability when the child needs the transportation to receive the services?*

Yes. If necessary for the private school student to benefit from or participate in equitable services, transportation must be provided 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. The IDEA's provisions do not require the school district to provide transportation from the child's home to the private school. The cost of providing transportation may be included in determining whether a school district has expended a proportionate share of its IDEA funds on services for private school students.

34. *What is a services plan?*

Each parentally placed private school student designated by the school district to receive special education or related services must have a services plan in place before the student receives the services. A services plan describes the specific special education and/or related services the student will receive from the school district in light of the services the school district has determined will be available to private school students. To the extent appropriate, the services plan includes IEP elements at section 34 CFR 300.320. The elements in each student's services plan may vary depending on the services to be provided. Many services plans will include:

- the present level of academic achievement and functional performance;
- measurable annual goals;
- a statement of the special education, related services, or supplementary aids and services;
- a statement of the program modifications or supports;
- an explanation of the extent, if any, to which the student will not participate with nondisabled children in the regular education environment;
- the projected date for the beginning of the services and modifications, and the amount, anticipated frequency, location and duration of the services and modifications; and
- a statement of how the student's progress toward the annual goals will be measured and when periodic reports on progress toward meeting the annual goals will be provided.

Other IEP elements may be included, depending on the services the school district will provide to the student, e.g., transition services.

35. *How does a school district develop a "services plan?"*

A school district must follow the requirements for IEPs when developing, reviewing, and revising a services plan. These include requirements for the IEP team; parent participation, including notification of the meeting; when an IEP must be in effect; and development, review, and revision of an IEP (34 CFR 300.321-324).

36. *Must a representative of the private school participate in developing, reviewing and revising a child's services plan?*

The school district must ensure a representative of the private school attends each meeting to develop, review, and revise the services plan. The student's private school teacher may serve as this representative. If a representative cannot attend, the school district must use other methods to ensure participation by a private school representative, including individual or conference telephone calls. Participation in the meetings provides the opportunity for private school staff to learn more about the student's strengths and needs.

37. *Must the team that developed the services plan decide the site at which the student will receive services?*

No. The sites where services for private school students are provided are determined by the school district, after consultation with private school representatives and representatives of parents of private school children. Services offered to parentally placed private school students with disabilities may be provided on-site at a student's private school, including a religious school. In the interests of the student, efforts should be made to provide services as near as possible to the student's private school so as not to unduly disrupt the student's educational experience.

38. *Who provides equitable services to parentally placed private school children with disabilities?*

Equitable services can be provided by employees of a school district, a Cooperative Educational Services Agency (CESA), or a County Children with Disabilities Education Board (CCDEB). In addition, federal law specifically permits provision of equitable services through contract with an individual, association, agency, organization, or other entity. A school district may use IDEA funds to make public school personnel available in other than public facilities to the extent necessary to provide equitable services for private school children with disabilities and if those services are not normally provided by the private school. The services provided by public agency personnel must be provided by agency personnel meeting the same standards as personnel providing services in the public schools. A school district may use IDEA funds to pay for the services of an employee of a private school to provide equitable services if the employee performs the services outside of his or her regular hours of duty and the employee performs the services under public supervision and control. Private school teachers providing equitable services do not have to meet the highly qualified teacher requirements.

39. *May a school district place equipment and supplies for equitable services in a private school?*

The school district may place equipment and supplies in a private school for the period of time needed for the program. The school district must ensure that equipment and supplies placed in a private school are used only for IDEA purposes and can be removed from the private school without remodeling the private school facility. The school district must remove equipment and supplies from a private school if the equipment and supplies are no longer needed for IDEA purposes or if removal is necessary to avoid unauthorized use of the equipment and supplies for other than IDEA purposes.

40. *May IDEA funds for equitable services be paid directly to a private school?*

No. IDEA funds for equitable services may not be paid directly to a private school. The school district must control and administer the funds.

41. *May IDEA funds for equitable services be used for repairs, minor remodeling, or construction of private school facilities?*

No. IDEA funds for equitable services may not be used for repairs, minor remodeling, or construction of private school facilities.

42. *If a school district fails to implement the requirements relating to parentally placed private school children with disabilities, may a parent file an IDEA state complaint?*

Yes. Any individual or group may file an IDEA state complaint that a school district or the DPI has failed to meet any of the legal requirements for children with disabilities enrolled by their parents in private schools. The complaint must be filed within one year of the alleged violation. For more information about filing an IDEA state complaint, go to <http://dpi.wi.gov/sped/complain.html> or call (608) 266-1781.

43. *May the parents of parentally placed private school students request mediation or a due process hearing under section 115.80, Wis. Stats?*

A parent of a parentally placed private school student may request mediation from the Wisconsin Special Education Mediation System or initiate a due process hearing with the DPI only about requirements relating to consent and evaluation, including the student's eligibility determination. The parent, or the attorney representing the parent, must provide a notice of a request for a due process hearing to the other party and forward a copy of the notice to the DPI. A parent may not request mediation or a due process hearing about the provision of the services in the student's services plan, because there is no individual right to them under the law. For more information about due process hearings, go to <http://dpi.wi.gov/sped/dueproc.html>.

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Attachments

This information update can also be accessed through the Internet:

<http://dpi.wi.gov/sped/bulindex.html>

Appendix B to Part 300—Proportionate Share Calculation

Each LEA must expend, during the grant period, on the provision of special education and related services for the parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA an amount that is equal to—

(1) A proportionate share of the LEA's subgrant under section 611(f) of the Act for children with disabilities aged 3 through 21. This is an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of parentally-placed private school children with disabilities aged 3 through 21 enrolled in private elementary schools and secondary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA aged 3 through 21; and

(2) A proportionate share of the LEA's subgrant under section 619(g) of the Act for children with disabilities aged 3 through 5. This is an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the total number of parentally-placed private school children with disabilities aged 3 through 5 enrolled in private elementary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools located in the LEA aged 3 through 5.

Consistent with section 612(a)(10)(A)(i) of the Act and § 300.133 of these regulations, annual expenditures for parentally-placed private school children with disabilities are calculated based on the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA eligible to receive special education and related services under Part B, as compared with the total number of eligible parentally-placed private school children with disabilities enrolled in private elementary schools located in the LEA. This ratio is used to determine the proportion of the LEA's total Part B subgrants under section 611(f) of the Act for children aged 3 through 21, and under section 619(g) of the Act for children aged 3 through 5, that is to be expended on services for parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA.

The following is an example of how the proportionate share is calculated:

There are 300 eligible children with disabilities enrolled in the Flintstone School District and 20 eligible parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA for a total of 320 eligible public and private school children with disabilities (note: proportionate share for parentally-placed private school children is based on total children eligible, not children served). The number of eligible parentally-placed private school children with disabilities (20) divided by the total number of eligible public and private school children with disabilities (320) indicates that 6.25 percent of the LEA's subgrant must be spent for the group of eligible parentally-placed children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. Flintstone School District receives \$152,500 in Federal flow through funds. Therefore, the LEA must spend \$9,531.25 on special education or related services to the group of parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the district. (Note: The LEA must calculate the proportionate share of IDEA funds before earmarking funds for any early intervening activities in 34 CFR 300.226).

The following outlines the calculations for the example of how the proportionate share calculated.

**Proportionate Share Calculation for Parentally-Placed Private School Children with Disabilities
For Flintstone School District:**

Number of eligible children with disabilities in public schools in the LEA	300
Number of parentally-placed eligible children with disabilities in private elementary schools and secondary schools located in the LEA	20
	<hr/>
Total number of eligible children	320
 FEDERAL FLOW-THROUGH FUNDS TO FLINTSTONE SCHOOL DISTRICT	
Total allocation to Flintstone	\$152,500
Calculating Proportionate Share: Total allocation to Flintstone	152,500
Divided by total number of eligible children	320
Average allocation per eligible child	476.5625
Multiplied by the number of parentally placed children with disabilities	20
Amount to be expended for parentally placed children with disabilities	9,531.25