

Students Placed in Private Schools by a Parent When FAPE is Not At Issue

IDEA and PROPORTIONATE SHARE

USEAM
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Private School Definition and Status

- Private school, for the purpose of this presentation, is a private school or facility, including religious, that meets the definition of an elementary or secondary school in the Individuals with Disabilities Education Act (IDEA).
 - Elementary School: a **nonprofit** institutional day or residential school that provides elementary education, as determined under State law.
 - Secondary School: a **nonprofit** institutional day or residential school that provides secondary education, as determined under State law.
- A home school does not meet the definition of a private school in Utah.

Non-Profit vs. For Profit

Non-Profit Private School Requirements

- Child Find
- Consultation
- Written Affirmation
- Equitable services
- Proportionate Share of Funding

For Profit Private School Requirements

- Child Find

No Entitlement to FAPE

- Students with disabilities unilaterally 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 (i.e., a free appropriate public education (FAPE)).
 - There remains a Local Education Agency (LEA) responsibility for child find, including evaluations.
- LEA school districts have an obligation to provide the group of parentally placed private school children with disabilities with equitable participation in services funded with federal IDEA funds.

LEA General Responsibility for Child Find

- LEAs are responsible for conducting a thorough and complete child find process (§300.109 and §300.111).
 - Purpose of child find is to ensure that all students with disabilities birth through 21 years of age within the LEA boundary (including those attending private schools), regardless of the severity of the disability, and who are in need of special education and related services, are IDENTIFIED, LOCATED, and EVALUATED.
 - Child find is an ongoing LEA responsibility and involves activities such as staff training, parent notification, and collaboration with other agencies.

LEA Responsibility for Child Find in Parentally Placed Private School Students with Disabilities

- LEA must locate, identify, and evaluate all students with disabilities who are enrolled by their parents in private, including religious, schools located within the LEA regardless of LEA or State of residence (§300.131).
- The process must ensure equitable participation of parentally placed private school students and an accurate count of those students.
- LEA child find activities and timeline must be similar.
- Cost of child find (including evaluations) not included in proportionate share calculations.
- Process includes ensuring that reevaluations are conducted at least every three years for students previously identified as IDEA eligible.

OSEP Letter to Chapman

- LEAs do not have to provide equitable services for students placed unilaterally in for-profit private schools.
- LEAs should not include students attending for-profit private schools in the proportionate share calculation.
- LEA must conduct child find in for-profit and non-profit private schools located within their boundaries.

LEA Child Count from All Private Schools

- The LEA must maintain in its records and provide to the USOE:
 - The number of parentally-placed private school students evaluated.
 - The number of parentally-placed private school students determined to be students with disabilities under Part B of the IDEA.
 - This number is determined after the required consultation with representatives of parentally placed private school students with disabilities.
 - The count is conducted on December 1 of each year and is used to determine the proportionate share in the next subsequent year.
 - The number of students provided services.

LEA Responsibility for Proportionate Share

- LEAs also have responsibilities for providing some special education and related services to parentally-placed non-profit private school students.
 - Decisions about the services that will be provided by the LEA must be made in accordance with the consultation and proportionate share requirements.
- IDEA requires that each LEA district determine the proportionate amount of Federal funds to be expended by the LEA for students attending private non-profit schools located within their LEA's jurisdiction.
 - IDEA 2004 places the responsibility for special education services with the LEA where the private school is located and not with the LEA in which the student resides and includes students whose parents reside out of state.

IDEA Requirement

- The proportionate share requirement is a federal IDEA requirement, and as such, there is no LEA responsibility to expend state and local funds during this process.
- IDEA eligible students are those included in the count for proportionate share.
 - Carson Smith eligibility does not always meet the IDEA eligibility requirement.
- State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended.

Data Needed to Calculate Proportionate Share

- Number of IDEA eligible students in the private schools (non-profit only) ages 3-21.
- Number of IDEA eligible students in the private schools (non-profit only) ages 3-5*.
- Number of IDEA eligible students in the LEA ages 3-21.
- Number of IDEA eligible students in the LEA ages 3-5.
 - *Students ages 3 through 5 are only considered if they are enrolled in a private preschool that is part of a private elementary school.
- Total Part B (611 and 619) flow-through allocation for the LEA.

Note: IDEA eligible students are students who have been evaluated and determined eligible for special education and related services.

Proportionate Share Calculation

Calculation of Proportionate Share of IDEA Part B 3-5 (619) and 3-21 (611) Funds Parentally Placed Non-Profit Private School Children with Disabilities		
Enter Your LEA ID Number		<input style="width: 80px; height: 20px;" type="text"/>
<p>Complete the following calculation to determine the proportionate amount of IDEA Part B funds to be used for the provision of services to parentally placed <u>non-profit</u> private school students with disabilities, age 3-21:</p>		
A.	Total Count of school students with disabilities, age 3-21, within LEA (December 1, 2009 Child Count) – LEA and <u>non-profit</u> private school students with disabilities	
B.	Enter the number of above students who are parentally placed in non-profit private schools	
C.	Percentage of total (B ÷ A)	
D.	Total IDEA Part B allocation (611/School-age) for 2010-2011	
E.	Proportionate amount for (3-21) non-profit private school students (C X D)	
<p>Complete the following calculation to determine the proportionate amount of IDEA Part B funds to be used for the provision of services to parentally placed <u>non-profit</u> private school students with disabilities, age 3-5:</p>		
A.	Total Count of school students with disabilities, age 3-5, within LEA (December 1, 2009 Child Count) – LEA and <u>non-profit</u> private school students with disabilities	
B.	Enter the number of above students who are parentally placed in non-profit private schools	
C.	Percentage of total (B ÷ A)	
D.	Total IDEA Part B allocation (619/Preschool) for 2010-2011	
E.	Proportionate amount for (3-5) non-profit private school students (C X D)	
Total Proportionate amount for (3-21) and (3-5) non-profit private school students		<input style="width: 80px; height: 20px;" type="text"/>
<p>Any of the above amount remaining as of 9/30/2011, must be obligated for the provision of services to parentally placed non-profit private schools in the next year.</p>		
<p>NOTE: The LEA must calculate the proportionate share of IDEA funds before earmarking funds for any coordinated early intervening services (CEIS).</p>		

LEAs Without Non-Profit Private Schools

- LEAs without non-profit private schools in their jurisdiction should establish procedures for collecting the necessary data and calculating proportionate share should their current demographics change.

Consultation Meaning and Purpose

- Each LEA must consult, in a timely and meaningful way, with non-profit private school representatives and representatives of parents of parentally placed private school students with disabilities during the design and development of special education and related services for parentally-placed private school students (§300.134).
- Consultation involves discussions between the LEA, non-profit private school representatives, and representatives of parents of parentally placed private school students with disabilities on key issues that affect the ability of eligible private school students with disabilities to participate equitably in federally funded special education and related services.
- Effective and successful consultation provides a genuine opportunity for all parties to express their views and to have those views considered by the LEA and ensure that the services provided meet the needs of eligible parentally placed private school students with disabilities.
- A unilateral offer of services by an LEA with no opportunity for discussion is not adequate consultation.

Consultation Process

- The consultation process must include the following:
 - The child find process and how parentally placed non-profit private school students suspected of having a disability can participate equitably, including how parents, teachers and private school officials will be informed of the child find process;
 - The determination of the proportionate share of Federal funds available to serve parentally placed non-profit private school students with disabilities, including the determination of how the proportionate share of those funds was calculated;
 - How the consultation process among representatives of the LEA, non-profit private school officials and representatives of parents of parentally placed private school students will take place, including how the process will operate throughout the school year to ensure that parentally placed private school students with disabilities identified through the child find process can meaningfully participate in special education and related services;
 - How, where, and by whom special education and related services will be provided, including a discussion of types of services (including direct services and alternate service-delivery mechanisms), as well as how such services will be apportioned if funds are insufficient to serve all students — and how and when these decisions will be made; and
 - How, if the LEA representative 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 LEA will provide to the private school officials, a written explanation of the reasons why the LEA chose not to adopt the recommendations of the private school officials.
- There is no requirement in IDEA on what time of year the meeting(s) must be held.

Written Affirmation

- After the consultation has occurred, the LEA must obtain a written affirmation signed by the representatives of the participating non-profit private schools.
 - If the representatives do not provide the affirmation with a reasonable period of time, the LEA must forward the documentation of the consultation process to the USOE.

LEA Decision Regarding Services to be Provided

- After consultation, the LEA is responsible for making final decisions about all aspects of the services (i.e., amount, type, location, and providers) to be provided to parentally placed non-profit private school students with disabilities.
- If the LEA 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 LEA must provide to the private school officials a written explanation of the reasons why the LEA chose not to accept the recommendations of the private school officials.

If a private school

- Declines the offer of the LEA district to participate in the consultation, the LEA keeps a record of this decision.

Services Plan

- Each parentally placed private school student with a disability who has been designated by the LEA in which the non-profit private school is located to receive special education or related services must have a services plan.
- The LEA must initiate and conduct meetings to develop, review, and revise a services plan.
- The LEA must ensure that a representative of the private school attends each meeting to develop the services plan and, if the representative cannot attend, use other methods to ensure participation by the private school, including individual or conference telephone calls.

Services Plan Content

- The services plan describes the specific special education or related services that the LEA will provide to the student (in light of the services that the LEA has determined it will make available to parentally placed students with disabilities in private schools).
 - It must meet the same content requirements as the IEP including access and progress in the general curriculum (or for students ages 3 to 5, access and progress in age appropriate activities) with respect to the services provided (no entitlement to FAPE).
 - It may include a different amount of services that students with disabilities in the LEA receive.
 - It must be developed, reviewed, and revised consistent with IEP requirements.

Provision of Equitable Services

- Equitable services must be provided by employees of an LEA or through contract by the LEA with an individual, association, agency, organization or other entity.
 - An LEA may use Part B funds to make LEA personnel available in other than public facilities to the extent necessary to provide equitable services for non-profit private school students with disabilities and if those services are not normally provided by the private school.
 - An LEA may use Part B 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.
- Personnel providing services to parentally placed non-profit private school students with disabilities must meet the same standards as personnel providing services in the LEA, except that they do not have to meet highly qualified special education teacher requirements.

Location of Equitable Services

- Services offered to parentally-placed non-profit private school students with disabilities may be provided on-site at a student's private school, including a religious school or at another location.
 - In the interests of the student, efforts should be made to provide services as near as possible to the student's school so as not to unduly disrupt the student's education experience.
- Transportation is required if it is necessary for the non-profit private school student with an IDEA disability to benefit from or participate in the equitable services.
 - If required, transportation would be from the student's school or home to a site other than the private school and from the service site to the private school (or the student's home, depending on the timing of the services).
 - LEAs are not required to provide transportation from the student's home to the private school.
 - The cost of transportation may be included in calculating whether the LEA has met the requirements for proportionate share spending.

IDEA Fund Restrictions

- Private school officials may not obligate or receive IDEA funds.
 - The LEA must control and administer the funds used to provide special education and related services to parentally-placed private school students with disabilities, and maintain title to materials, equipment and property purchased with those funds.
- IDEA funds for equitable services may not be paid directly to a private school.

Unallowable Use of IDEA Funds

- IDEA funds must not be used:
 - To finance the existing level of instruction in a private school or to otherwise benefit the private school.
 - To meet the needs of a private school or the general needs of the students enrolled in a private school.
 - For classes that are organized separately on the basis of school enrollment or religion of the student if the classes are at the same site and the classes include students who are enrolled in public schools and students who are enrolled in private schools.
 - For minor repairs, minor remodeling, or construction of private school facilities.

Expenditure of Funds

- Any unspent funds by the end of the fiscal year must be obligated by the LEA during a carryover period of one additional year.
- The USOE monitors the proportionate share calculations and expenditures as part of the Fiscal Monitoring Process and the Utah Program Improvement Planning System (UPIPS) monitoring process.

Property, Equipment, and Supplies

- The LEA:
 - Holds title to and administers materials, equipment, and property purchased with IDEA funds.
 - May place equipment and supplies in a non-profit private school for a period of time needed for the IDEA services.
 - The equipment and supplies must be used only for IDEA services and can be removed without remodeling the private school facility.
 - The equipment and supplies must be removed when they are no longer needed to provide IDEA services or when necessary to avoid unauthorized use for other than IDEA purposes.

Resources

- OSEP Q&A on Serving Children With Disabilities Placed by Their Parents at Private Schools (March 2006)
- U.S. Department of Education: *The Individuals with Disabilities Education Act (IDEA)*. Provisions Related to Children With Disabilities Enrolled by Their Parents in Private Schools (February 2008)
- IDEA Regulations §300.130-300.144
- Utah State Board of Education Special Education Rules (August 2007)
- OSEP Letter to Chapman (August 2007)