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## Technical Assistance Paper

### Students with Disabilities Enrolled by Their Parents in Private Schools

**Summary:** Although there is no individual entitlement to free appropriate public education (FAPE) for students with disabilities who have been enrolled by their parents in private schools, school districts where the private school is located have an obligation to ensure that such private school students have an opportunity to participate in programs assisted by or carried out under Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004). The purpose of this technical assistance paper (TAP) is to provide all involved parties with guidance in the development and implementation of procedures for parentally placed private school students with disabilities.

**Contact:** Laura Harrison  
(850) 245-0476  
[Laura.Harrison@fldoe.org](mailto:Laura.Harrison@fldoe.org)

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CHERI PIERSON YECKE, PH.D.  
CHANCELLOR, K-12 PUBLIC SCHOOLS

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## Background

### **A-1. What are the school district's obligations to parentally placed private school students with disabilities?**

IDEA 2004 requires that school districts:

- Consult with 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 these students (34 Code of Federal Regulations (CFR) 300.134).
- Conduct child find activities to locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district (34 CFR 300.131).
- Provide opportunities for the participation of eligible students with disabilities in programs assisted or carried out under Part B (34 CFR 300.132).
- Expend a proportionate amount of the Part B funds for providing special education and related services to parentally placed private school students with disabilities (34 CFR 300.133).

## Definitions

### **B-1. Who falls under the designation of *parentally placed private school students*?**

Under the IDEA 2004, parentally placed private school students are students with disabilities who are enrolled by their parents in private schools as a result of parent choice. This includes children who are participating in voucher or scholarship programs (e.g., McKay Scholarships Program for Students with Disabilities; Corporate Tax Credit Program). It does not include students with disabilities placed by a public agency at a private school or facility as a means of providing special education and related services, and does not include students participating in home education programs [34 CFR 300.130; Section 1002.41, Florida Statutes (F.S.)].

### **B-2. Are students who are placed by other state agencies (e.g., Agency for Persons with Disabilities; Department of Children and Families) considered parentally placed private school students?**

No. Parentally placed private school students are only those students who are placed by their parents in a private school. In the case of an agency placement, even if it is initiated at the request of the parents, it is the state agency (e.g., Agency for Persons with Disabilities, Department of Children and Families) making the placement. Such students are not considered parentally placed private school students (34 CFR 300.145).

**B-3. How are private schools defined in Florida?**

Section 1002.01 (2), F.S., defines a private school as an individual, association, co-partnership, corporation, department, division, or section of such organizations that designates itself as an educational center that includes kindergarten or a higher grade.

**B-4. Are private prekindergarten programs considered private schools?**

If the school where the prekindergarten program is located meets the statutory definition of a private school (i.e., “includes kindergarten or higher...”), it is considered a private school, and the students with disabilities enrolled there would be included in the required activities (34 CFR 300.130).

**B-5. Are prekindergarten children with disabilities enrolled in private childcare programs or community-based early education and care programs considered parentally placed private school students in the same manner as school-age children?**

Not necessarily. In order to be considered among the pool of parentally placed private school students with disabilities who are eligible to receive some services through the agreement with the school district, a student must be enrolled in a private school. As noted in the question above, if a school that meets the requirements under the statute includes a prekindergarten program, students enrolled in that program also would be considered eligible students under this requirement [34 CFR 300.133(a)(2)(ii)].

If an eligible prekindergarten child is identified, the school district would offer to make FAPE available at a public school or through a district placement in a private school or other community program. In some cases, the individual educational plan (IEP) team may determine that the childcare or other setting selected by the parent is the least restrictive environment in which to provide FAPE in accordance with the IEP (34 CFR 300.116).

If the parents refuse the school district’s offer of FAPE and choose to enroll the child in a private school, then the child would be considered in the pool of eligible students under this obligation.

**B-6. Are gifted students considered parentally placed private school students for whom the district must provided services?**

No. The IDEA requirements apply only to students with disabilities. School districts may elect to provide services to gifted students who are enrolled in private schools, but IDEA funds should not be used to provide services to those students (34 CFR 300.130).

## **Consultation**

### **C-1. What is meant by *consultation*?**

In order to ensure equitable participation of eligible private school students in federally funded special education and related services, school districts must engage in timely and meaningful discussions with private school representatives and representatives of parents of parentally placed private school students before making decisions regarding the services that will be provided (34 CFR 300.134).

### **C-2. What must the consultation process include?**

In accordance with 34 CFR 300.134, the school district must consult with private school representatives and representatives of parents of parentally placed private school students with disabilities regarding the following:

- The child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process.
- The determination of the proportionate amount of Federal funds available to serve parentally placed private school students, and how the amount was calculated
- How the consultation process will operate throughout the year, including when the private schools should be expecting meeting notices.
- How, where, and by whom special education and related services will be provided, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all students, and how and when these decisions will be made.
- How, if the school district disagrees with the views of the private school officials, the district will provide a written explanation of the reasons why the district chose not to provide services directly or through a contract.

### **C-3. Is it required that the consultation process between the school district and the representatives of the private schools be documented?**

It is recommended that the school district keep written documentation of the provision of services or types of services that have been agreed upon. In addition, if the school district disagrees with the views of the private school officials regarding the types of services that will be provided, the district must provide a written explanation of why it chose not to provide those services [34 CFR 300.134(e)].

Once the consultation process has occurred, the school district is to obtain written affirmation signed by the representatives of participating private schools. If they do not provide this written affirmation within a reasonable period of time, the district must forward its documentation of the consultation process to the Florida Department of Education (FDOE) (34 CFR 300.135).

**C-4. What if a representative of a private school disagrees with the consultation process or the decisions made regarding the provision of services?**

A private school representative has the right to submit a complaint to the State that the school district did not engage in consultation that was meaningful and timely and/or did not give their views consideration. In this case, the private school representatives must provide documentation of their grievance with the Florida Department of Education. In turn, the school district must forward its appropriate documentation to the State. Once the decision is rendered, should the private school representative still be dissatisfied, a complaint may be submitted to the Secretary of the U.S. Department of Education (34 CFR 300.136).

## **Child Find/Reevaluations**

**D-1. What is the school district's responsibility for child find activities for parentally placed private school children?**

School districts must conduct child find for all children attending public and private schools, including religious schools, that are located in the jurisdiction of the district to identify students who are in need of special education and related services. The child find activities must ensure equitable participation of parentally placed private school students and an accurate count of students with disabilities [34 CFR 300.111(a)(1)(i) and 300.131(b)].

In carrying out child find for parentally placed private school children, districts must undertake activities similar to those undertaken for their publicly enrolled or publicly placed children. Some activities that districts may use to communicate with families and assist in identifying students who may have disabilities include widely distributing informational brochures, providing regular public service announcements, staffing exhibits at health fairs and other community activities, and creating direct liaisons with private schools.

**D-2. Must child find for private school children be comparable to child find for public school children?**

Yes. Activities undertaken to carry out child find must be comparable and equitable for both groups; this includes the timing of the activities. The school district may not delay conducting child find, including individual evaluations, for privately enrolled children until after child find for publicly enrolled children has been conducted. As with students enrolled in the public schools, individual evaluations must be completed within the required 60-day timeline and the district must ensure that eligibility determination occurs with no unreasonable delay [34 CFR 300.131(c) and (e)].

**D-3. How is child find handled for out-of-state students who attend private schools located in Florida?**

Child find responsibilities are the same regardless of where the student resides. The school district where the private school is located remains the responsible party for child find activities

for those students attending private, including religious, elementary schools, and secondary schools located in the school district [34 CFR 300.131(f)].

**D-4. Are public agencies required to conduct triennial reevaluations of parentally placed private school children with disabilities?**

Yes. The school district is responsible for ensuring a reevaluation is conducted at least once every three years, unless the parent and the district agree that a reevaluation is not necessary [34 CFR 300.303(b)]. One purpose of reevaluation is to determine whether the student continues to be a student with a disability, and as such it is a part of the school district's child find responsibilities [34 CFR 300.305(a)(2)(i)(B)]. An accurate annual count of eligible students with disabilities enrolled in public and private schools within the district is critical in calculating the proportionate share of funds that must be expended [34 CFR 300.133(c)].

**D-5. What is the procedure for conducting reevaluations of parentally placed private school students?**

The three-year reevaluation requirement applies to all eligible parentally placed private school students, including those eligible students not currently receiving special education or related services from the school district. The school district where the private school is located is responsible for ensuring the reevaluation is conducted. However, the school district has flexibility as to how this is accomplished. For example, the district may assume the responsibility itself, contract with another public agency (such as the school district of residence), or make other arrangements (34 CFR 300.131; 71 Federal Register (Fed. Reg.) 46592 and 46593).

The district should establish a procedure for notifying the private school and the parents that a reevaluation is due and for ensuring that the reevaluation is completed. The following are strategies that a district might use to fulfill the reevaluation requirements:

- Schedule a telephone conference with the private school staff and the parent. During this call, existing information regarding the student, such as a review of student progress, current classroom-based assessments, and observations by the teacher, would be discussed. If, at the conclusion of the discussion, it is determined that a formal evaluation is required, consent of the parent should be obtained prior to any testing.
- Arrange for a meeting with private school staff and the parent to conduct the activities described above.
- Collect input from private school staff and the parent via a form; such a form may be developed by the district. The information captured from this form should provide information on the student's current progress, classroom-based assessments, and any observations by staff. If this information indicates a need for formal evaluation, parent consent is needed prior to conducting any testing.

**D-6. What if the parent does not respond to attempts to obtain consent for formal assessment as part of a reevaluation?**

If the parent does not provide consent for reevaluation, or fails to respond to a request to provide consent, the school district is not required to consider the child as eligible for services as a

parentally placed private school student with a disability. However, to meet the reasonable efforts requirement regarding obtaining parental consent, the school district must document its attempts to obtain that consent (e.g., detailed records of telephone calls made or attempted, and the results of those calls; copies of correspondence sent to the parents, and any responses received) [34 CFR 300.300(d)(4) and (5)].

**D-7. What happens if, through the reevaluation process, the team determines that a parentally placed private school student no longer is eligible as a student with a disability?**

If the team determines that the student meets the school district's dismissal criteria from whichever exceptional student education (ESE) programs the student was eligible for, then the student must be dismissed. In that case, the student would no longer be eligible for consideration for services as a parentally placed student with a disability under IDEA [34 CFR 300.305(e)(1)].

It should be noted that, in accordance with Section 1002.39(2)(b), F.S., a student on a McKay Scholarship may continue in the program until the student returns to a public school or graduates from high school, regardless of continued eligibility as a student with a disability, as long as the student is enrolled in a participating private school.

## **Services Provided**

**E-1. What types of services may the school district provide to private school students?**

The specific types of services to be provided are based on information obtained during the school district's consultation with representatives of private schools and parents of students with disabilities. The final decision with respect to the services provided is made by the school district (34 CFR 300.137).

The Analysis of Comments and Changes section of the regulation related to 34 CFR 300.137 (71 Fed. Reg. 46593) provides the following examples of services that may be included in a school district's consultative agreement:

- Speech and language therapy
- Occupational and physical therapy
- Consultative services
- Specific instructional materials
- Specific professional development for teachers

**E-2. Are private school personnel providing equitable services under IDEA required to meet the highly qualified teacher requirements?**

No. Personnel providing services to parentally placed private school students with disabilities on behalf of the school district must meet the same standards as personnel providing services in the public schools, except that teachers do not have to meet the highly qualified special education teacher requirements of 34 CFR 300.18 [34 CFR 300.138(a)].

**E-3. Is there any requirement about the location at which services may be provided?**

No. Services may be provided on-site at the private school, including religiously affiliated private schools, at a public school, or at some other mutually agreed upon site (34 CFR 300.139).

**E-4. If the services are not provided at the private school, who is responsible for transportation?**

If transportation is required for the student to benefit from or participate in the services provided, then the school district must provide transportation from the child's school or the child's home to a site other than the private school or from the service site to the private school or to the child's home. The school district is not required to provide transportation between the student's home and the private school. Transportation costs incurred by the school district would be included in the expenditures toward satisfying the proportionate share amount (34 CFR 300.139).

**E-5. Is professional development for private school teachers an allowable service to be provided?**

Yes. There is no stipulation in IDEA 2004 that excludes professional development for private school teachers as a means of facilitating special education and related services for those students with disabilities enrolled in private schools through parental choice [34 CFR 300.134(d)(1)].

**E-6. Can the school district place equipment and supplies for equitable services in a private school?**

Yes. However, equipment and supplies may be placed in a private school only for the period of time needed for the program and they must be used for meeting the district's obligations to parentally placed private school students required under Part B. Removal of the equipment and supplies from a private school can occur when they are no longer needed for Part B purposes, or if removal is necessary to avoid unauthorized use of the equipment and supplies for other Part B purposes [34 CFR 300.144(b)].

**E-7. Can assistive technology devices and/or services be provided to parentally placed private school students with disabilities?**

Yes, as long as the services plan team determines that the student needs assistive technology devices or services as part of his or her specially designed instruction, related services, or supplementary aids and services, and these devices or services are included in the consultative agreement between the private schools and the school district [34 CFR 300.138(2)].

## Services Plans

### **F-1. What is the process for developing a services plan for a parentally placed private school student with a disability?**

To the extent appropriate, a services plan must parallel the IEP content requirements and must be developed, reviewed, and revised consistent with the IEP process requirements related to team membership, parent participation, and when the plan must be in effect. Note, however, that the plan need only include information related to those specific services that the school district has determined the student will receive in accordance with the consultative agreement [34 CFR 300.138(b)].

A representative of the private school must attend each meeting during the development. If the private school representative cannot attend, then other methods, such as a conference call, must be used [34 CFR 300.137(a)].

### **F-2. Can an IEP be used as a services plan?**

No. Rule 6A-6.03411(3)(n)3, FAC., *Policies and Procedures for the Provision of Specially Designed Instruction and Related Services for Exceptional Students*, requires that “Specially designed instruction provided by the local school board to these students shall be consistent with the students’ services plans, in accordance with Rule 6A-6.030281, FAC.” A services plan is required to contain only the specific special education and related services provided to a parentally placed private school student with a disability. An IEP used as a services plan would not be appropriate as it contains much more information and signifies that a student is entitled to FAPE, which a parentally placed private school student with disabilities is not (71 Fed. Reg. 46596; Rule 6A-6.03411 FAC.; Rule 6A-6.030281, FAC.).

## Funding

### **G-1. How is the proportionate share for parentally placed private school students with disabilities calculated?**

The proportionate share calculation is described in Appendix B to Part 300 in the Federal Register (Fed. Reg.). The proportionate share is calculated using the proportion of eligible parentally placed private school students compared to the total population of eligible students in the school district multiplied by the entitlement amount. An example is provided below (71 Fed. Reg. 46814).

*First, determine how many “eligible” students are enrolled in public or private schools located in the school district (those students who have been evaluated and determined eligible as students with disabilities in accordance with IDEA and Florida State Board of Education rules).*

*90 eligible public school students*  
*+ 10 eligible private school students*  
*= 100 total population of eligible students*

Next, determine the district's flow-through allocation. For this example, assume the allocation is \$100,000.

There are two ways to calculate the proportionate share:

- I.  $(\text{Allocation}) \times (\# \text{ eligible private school students}) \div (\text{total \# of eligible students})$   
 $\$100,000 \times 10 \div 100 = \$10,000$  proportionate share amount
- II.  $(\text{Allocation}) \div (\text{total \# of eligible students}) \times (\# \text{ eligible private school students})$   
 $\$100,000 \div 100 \times 10 = \$10,000$  proportionate share amount

**G-2. When calculating the proportionate share, is this applicable to part B entitlement funds only?**

Separate proportionate share amounts should be calculated (1) using the amount of Part B funds and (2) using preschool funds (71 Fed. Reg. 46814).

**G-3. Are students participating in the McKay Scholarships for Students with Disabilities Program considered in the eligible count of parentally placed private school students?**

Yes. A student participating in the McKay Scholarship program and who continues to be identified as a child with a disability is considered to be a parentally placed private school student and thus should be included in the count of parentally placed private school students (34 CFR 300.130).

**G-4. Are students participating in home education included in the parentally placed count of eligible students?**

No. The Analysis of Comments and Changes section of the regulation related to 34 CFR 300.133 (71 Fed. Reg. 46594) states that whether home-schooled students are considered parentally placed private school students is a matter of state law. In Florida, students who are enrolled in a home education program are not considered parentally placed private school students (S. 1002.01(2), F.S.).

**G-5. When should the count of parentally placed private school students be collected?**

For the purpose of calculating the proportionate share for the upcoming school year, districts should count eligible parentally placed private school students during Survey 2 in October of each year, which is the time period during which public school students with disabilities are counted and reported to FDOE. This allows for a common time period for counting eligible students for the purpose of calculating proportionate share. This does not exclude parentally placed private school students found eligible after October from consideration for services during that school year [34 CFR 300.133(c)].

**G-6. What are appropriate expenditures when satisfying the proportionate share?**

Appropriate expenditures include all direct and indirect costs associated with providing specialized instruction and related services for parentally placed private school students with disabilities. This includes personnel costs for salaries or contracted services positions. Applicable costs may also include staff development and training, equipment for students with disabilities, instructional materials and supplies, and the costs of providing transportation. Costs should be allocable to providing special education for students with disabilities enrolled in private schools and should by no means benefit the private school or nondisabled children enrolled at the private school (34 CFR 300.141 – 300.144).

**G-7. Are there any circumstances by which Part B funds for equitable services may be paid directly to a private school?**

No. Part B funds for equitable services may not be paid directly to a private school. The local educational agency (LEA) must administer the funds used to provide special education and related services to parentally placed private school students with disabilities and maintain title to any materials, equipment, or property purchased with those funds [34 CFR 300.141(a)].

**G-8. May amounts expended for child find, including individual evaluations, be deducted from the required amount of funds to be expended on services for parentally placed private school children with disabilities?**

No. The statutory provisions regarding child find and participation of parentally placed private school children with disabilities in programs assisted or carried out under Part B of IDEA 2004 are separate and distinct obligations. The child find obligation, including individual evaluations (both initial and reevaluations), exists independently from the services provision. Therefore, the costs of child find activities, including individual evaluations, may not be considered as part of the proportionate share expenditure requirement [34 CFR 300.131(d)].

**G-9. If the amount of the proportionate share to be expended by the school district has not been satisfied by the end of the fiscal year, is the school district obligated to expend the remaining amount in a “roll year”?**

Yes. School districts must document all applicable expenditures for satisfying the proportionate share amount. Any remaining funds from the first year should be considered “roll” and be used during the second fiscal year for proportionate share expenditures [34 CFR 300.133(a)(3)].

## **Reporting Requirements**

**H-1. Are parentally placed private school students reported through the state’s automated student database?**

Yes. Parentally placed private school students receiving services through a services plan should be reported for each designated survey period during the school year. With the exception of McKay Scholarship students, N999 should be used to identify the school of enrollment. For McKay Scholarship students, the school of enrollment should be identified as 3518. Refer to the

Database Manual available through the Education Information and Accountability services Web site at [www.fl DOE.org/eias](http://www.fl DOE.org/eias) for additional information.

**H-2. Are data reported for parentally placed private school students who are not receiving services?**

Each LEA must maintain in its records, and provide to the state, the following information related to parentally placed private school children covered under 34 CFR 300.130 through 300.144:

- The number of children evaluated
- The number of children determined to be children with disabilities
- The number of children served [34 CFR 300.132(c)]

However, only those students who are receiving services should be reported through the automated student database (see Database Manual at [www.fl DOE.org/eias](http://www.fl DOE.org/eias)).

## **Procedural Safeguards**

**I-1. Do parentally placed private school students with disabilities have the same procedural safeguards as students with disabilities enrolled in public schools?**

No. Unlike for students enrolled in public schools, due process is not applicable, except in the case of child find. The due process procedures described at 34 CFR 300.504-300.519 apply only to issues involving the identification and evaluation of parentally placed private school children with disabilities, including reevaluations. Disagreements between parents and the school district related to eligibility for special education and related services, a district's refusal to conduct an evaluation, or a district's refusal to conduct an evaluation within a reasonable period of time are some issues that could be resolved through due process proceedings [34 CFR 300.140(a)].

A complaint indicating that child find has not taken place must first be filed with the LEA where the private school is located. The LEA, in turn, must send a copy to the State. This course of action can be completed by either the parent of the student or the private school representative [34 CFR 300.140(b)].

Additionally, a formal written complaint alleging that the school district failed to meet any other requirements related to parentally placed private school students with disabilities (e.g., provision of services provided, proportionate share, and/or consultation process) can be submitted to the Florida Department of Education. A request for mediation also may be submitted to resolve such issues [34 CFR 300.140(c)].