

Provision of Services to Students with Disabilities Enrolled By Their Parents in Private Schools

BACKGROUND

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) makes provisions for the different ways in which private school placement of children with disabilities may occur. These situations involve students placed in private schools by school districts and parentally-placed students. The latter group includes children placed in private schools by their parents when the provision of a free and appropriate public education (FAPE) is at issue, as well as children voluntarily enrolled in private school for reasons not generally related to FAPE. The obligations of public agencies to provide special education and related services to students enrolled in private schools differ depending on the circumstances of their enrollment.

The requirements are quite clear regarding students enrolled by the district in a private school for the purpose of receiving special education and related services (i.e., placed by the public school in order to receive FAPE). As described in IDEA 2004 and in the current federal regulations at Title 34, Section 300.401, Code of Federal Regulations (CFR), such a student “(a)...is provided special education and related services—(1) In conformance with an IEP [individualized education program] that meets the requirements of §§300.340-300.350; and (2) At no cost to the parents; (b) Is provided an education that meets the standards that apply to education provided by the State Education Agency (SEA) and Local Education Agency (LEA) (including the requirements of this part); and (c) Has all of the rights of a child with a disability who is served by a public agency.” For these students, the public agency retains all responsibility for ensuring the provision of FAPE.

Requirements for parentally-placed private school students with disabilities differ from those for publicly placed students, and there are additional differences based on the type of parental placement involved. In the state of Florida, there are a variety of avenues open to families who wish to pursue private school enrollment for their children with disabilities. Some students have been enrolled unilaterally in private schools by their parents when they feel FAPE has not been provided by the public school; the parent may then request a due process hearing to determine if the district is obligated to pay for the placement. Others simply are placed by parents who have chosen private school education for their children. Still others are participants in the Corporate Tax Credit Scholarship Program for children of families with limited financial resources. Finally, some are students with disabilities participating in the John M. McKay Scholarships for Students with Disabilities Program.

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BUREAU OF EXCEPTIONAL EDUCATION AND STUDENT SERVICES

PURPOSE

In December 2004, amendments to the IDEA were signed into law, with most new requirements having an effective date of July 1, 2005. As a result of the reauthorization, there have been changes in school districts' obligations for the equitable participation of private school students in activities assisted by or carried out under section 612(a)(10) of IDEA 2004. In light of those changes, this technical assistance paper (TAP) was developed to help clarify issues related to parentally-placed private school students with disabilities. In addition, questions of SEA and LEA obligations to homeschooled students are addressed. It should be noted that the No Child Left Behind Act of 2001 (NCLB) also requires that LEAs provide private school students, their families, teachers, and other personnel the opportunity for equitable participation in special educational services and other benefits that are required under that act, with many district obligations that parallel those described in this document.

The intent of this TAP is to provide districts with guidance in the development and implementation of policies and procedures for private school students with disabilities. The information included here is based on the Department's interpretation of the federal and state statutes and regulations and on written communication from the Office of Special Education and Rehabilitation Services (OSERS) regarding this topic (i.e., Office of Special Education Programs (OSEP) Memorandum 00-14 dated May 4, 2000, *Questions and Answers on Obligations of Public Agencies in Serving Children with Disabilities Placed by Their Parents at Private Schools*; OSEP Memorandum 05-09 dated June 27, 2005, *Obligations of States and Local Educational Agencies to Parentally-Placed Private School Children with Disabilities*; OSEP Topic Brief, *Children Enrolled by Their Parents in Private Schools*; OSEP Technical Assistance dated March 2006, *Questions and Answers On Serving Children With Disabilities Placed by Their Parents at Private Schools*, available at <http://www.ed.gov/policy/speced/guid/idea/idea2004.html>).

Revisions and/or additions to the information presented here may be required following promulgation of the final implementing regulations for IDEA 2004.

QUESTIONS AND ANSWERS

District Obligations

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 Scholarship 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 it does not include students participating in home education programs under Section 1002.41, Florida Statutes (F.S.).

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.

3. What type of program is considered to be a private school?

Section 1002.01(2), F.S., defines a private school as an individual, association, co-partnership, or corporation, or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten or a higher grade. *A pre-kindergarten (pre-K) program that does not include kindergarten or a higher grade would not be considered a private school.* However, if a school that meets the requirements under the statute includes a pre-K program, students enrolled in that program would be considered eligible students under this requirement.

4. Is the school district responsible for parentally-placed private school students who live in the district, or for parentally-placed private school students who attend private schools located in the district?

The LEA's obligation for equitable participation is to students who attend private schools that are located in the jurisdiction of the LEA. Previously, the LEA's obligation was to private school students whose residence was within the jurisdiction of the LEA. This change from district of residence to district of attendance represents a significant change.

5. Are pre-K children with disabilities enrolled in private childcare programs or community-based early education and care programs considered 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 district, a student must be enrolled in a private school. As noted in question #2 above, if a school that meets the requirements under the statute includes a pre-K program, students enrolled in the pre-K program also would be considered eligible students under this requirement.

If an eligible pre-K child is identified, the 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 IEP team may determine that the childcare or other setting selected by the parent is the least restrictive environment in which to implement FAPE in accordance with the IEP. If the parents refuse the 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.

6. Do parentally-placed private school students with disabilities retain the same rights to special education and related services as public school students?

No. Children who have been parentally-placed in a private school no longer have an individual entitlement to FAPE. According to IDEA 2004 and the current federal regulations at 34 CFR §300.454(a)(1), “No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.” However, should parents choose to re-enroll their children in public school, their rights to a free appropriate public education would be reinstated.

7. What are the LEA obligations to parentally-placed private school students with disabilities?

Specific provisions regarding state and local educational agency obligations for parentally-placed private school students with disabilities require the following:

- Child-find activities must be conducted to locate, identify, and evaluate children placed by their parents in private preschools, elementary schools, and secondary schools, including parochial schools, who may need special education and related services. This obligation applies to all students with disabilities, including students who are receiving services from the district and those who are not.
- To the extent consistent with their number and location, provision must be made for the participation of eligible students with disabilities in programs assisted or carried out under Part B. This requires that a proportionate amount of the federal funds available to districts under Part B be expended for services for parentally-placed private school students with disabilities.

8. How are decisions made regarding the services that are to be provided to parentally-placed private school children with disabilities, including the type and location of services?

School districts must 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 the students. In accordance with 20 USC 1412(a)(10)(A)(iii), the consultation must include:

- 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;
- the consultation process among district officials, private school officials, and representatives of parents of parentally-placed private school students, including how the process will operate throughout the school year;
- how, where, and by whom special education and related services will be provided for parentally-placed private school children, 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; and

- how, if the 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.

This consultation must take place before the district makes any decisions that will affect the opportunities of parentally-placed private school children to participate in these services. (34 CFR §300.454(b)(3))

Decisions regarding the specific services to be provided are based on consideration of the needs of the students with disabilities, their location, and the funds that are available. It is expected that these considerations would vary over time, and the decision regarding services to be provided is reviewed annually. The district makes the final decision regarding the services to be provided.

As noted previously, many school district obligations to private school students under NCLB are similar to those under the IDEA 2004; timely and meaningful consultation between LEAs and private schools is perhaps the most significant. This consultation must occur for the following programs: Title I, Parts A, B (subparts 1 and 3), and C; Title II, Parts A, B, and D; Title III, Part A; Title IV, Parts A and B; and, Title V, Part A. School district staff should communicate among the district's various departments to determine if they wish to coordinate consultation and service delivery.

9. Are there documentation requirements for this process?

Yes. Once the timely and meaningful consultation has occurred, written affirmation signed by representatives of participating private schools must be obtained by the district. If the private school representatives do not provide this affirmation, documentation of the consultation process should be forwarded to the Florida Department of Education (FDOE). Although IDEA 2004 does not state that the final affirmation regarding services to be provided must be made available in a written document, the district is encouraged to do so. However, if the district disagrees with the views of the private school officials regarding the services to be provided, the district must provide a written explanation of the reasons for its decision.

10. What recourse do representatives of private schools have if they believe that the district did not engage in consultation that was meaningful or timely or did not give due consideration to the views of the private school representative(s)?

A representative of a private school has the right to submit a written complaint to the FDOE, Bureau of Exceptional Education and Student Services. If the private school official is dissatisfied with the decision rendered by FDOE, the representative may submit a complaint to the USDOE.

11. When FAPE is an issue, does the district's obligation to students placed by their parents in private school differ from that for students voluntarily placed by their parents?

This depends on the findings of due process proceedings. Generally, students who have been unilaterally placed in a private school by their parents when FAPE is an issue are considered

parentally-placed private school students under IDEA 2004, with the same rights and obligations. However, if the district's offer of FAPE is found to be inadequate by a hearing officer or the courts, then the district may be required to pay for some or all of the services provided in the private school.

Child-find/Reevaluations

12. What is the school district's responsibility for child-find activities under IDEA 2004 for parentally-placed private school children?

Under IDEA 2004 and the federal regulations at 34 CFR 300.451, 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 LEA, regardless of the severity of their disability, who are in need of special education and related services.

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, such as 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. Once children are identified who are suspected of having disabilities, the district must have procedures for conducting evaluations of such children enrolled in private schools in their jurisdiction within a reasonable period of time, without undue delay, and at no cost to parents.

Public agencies need to have data to develop an accurate count of the total number of eligible private school children with disabilities located in their jurisdiction. In order to calculate the proportionate share of their Part B subgrant that must be expended annually for these children, child-find for parentally-placed private school children with disabilities is particularly important.

13. 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, and the 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.

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

Yes. According to OSEP memorandum 00-14 (<http://www.nichcy.org/private.htm>):

“...The three-year reevaluation requirement applies to all eligible parentally-placed private school children with disabilities, even to those... who are not currently receiving special education or related services from a public agency in connection with a parental private school placement. It is essential for public agencies to ensure that required reevaluations of

all parentally-placed private school children are conducted because they provide current data for use in the annual count of the total number of eligible parentally-placed children with disabilities residing in the LEA's jurisdiction. This annual count is used in calculating the proportionate share of funds that must be expended on services for this population of children."

15. Which district is responsible for conducting the reevaluation—the district of residence or the district of attendance?

LEAs are responsible for all child-find activities for students attending any and all schools located in its jurisdiction, public and private. Because reevaluation is a part of the child-find obligation, the school district where the private school is located would be responsible.

Prior to the implementation of IDEA 2004, the district of origin for students participating in the McKay Scholarship Program for Students with Disabilities maintained the responsibility for conducting reevaluations for those students, regardless of any changes in the student's district of residence. In response to the change in IDEA 2004 assigning child-find responsibility to the district in which the private school is located, the requirement for McKay Scholarship students also has been revised. *Districts are now responsible for conducting child-find and reevaluation activities for all students with disabilities who attend private schools located within the district, including McKay Scholarship students.*

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

The district is responsible for ensuring the reevaluation is conducted, but has flexibility as to how this is accomplished. For example, it may assume the responsibility itself, contract with another agency, or make other arrangements. The reevaluation must be conducted in accordance with evaluation requirements described in 34 CFR §300.532-300.535.

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. Some of the strategies for completion of the triennial evaluation include any of the following:

- 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.

Regardless of the method used for the completion of the triennial evaluation, documentation

of contacts, including written communication, telephone conferences, and meetings, must be maintained.

The review of existing information that is described above must be conducted by a group composed in a manner consistent with the requirements for IEP or services plan teams. Private school staff would serve in the capacity of the teacher(s) on the team.

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

The same requirements apply for all students with disabilities. Oftentimes, a team will determine that a review of existing data is sufficient to judge whether a student continues to be an eligible student with a disability, and no formal assessment is needed. In that case, consent is not required. However, if the team determines that a formal assessment is warranted, consent from the parent must be sought. If the parent responds to the request by denying consent, then the assessment cannot be administered. In contrast, if the parent fails to respond to the request for consent (i.e., does not clearly provide or deny consent) as noted in 34 CFR §300.505(c)(1), formal assessment for reevaluation can be conducted without consent of the parent "...if the public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond." "Reasonable measures" would require at least two documented attempts to contact the parent with a written proposal for evaluation. Because of the unique circumstances surrounding parentally-placed private school students, districts are encouraged to consider all other options prior to administering a formal assessment without written parental consent.

18. 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 district's dismissal criteria from whatever ESE programs the student was eligible for, then the student must be dismissed. 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. However, if the student is reevaluated and dismissed from all ESE programs, that student would no longer be eligible for consideration for services as a parentally-placed student under IDEA.

19. What happens if, through the reevaluation process, the team determines that the student's needs have changed or that the student is eligible under additional ESE programs?

Parentally-placed private schools students have no individual right to FAPE. Therefore, the district's obligations to the student are not tied to any specific areas of need or types of disability. If, during the reevaluation process, the parents indicate that they would like to know, based on the new information from the reevaluation, what services would be available for their child if the child were reenrolled in a public school, an IEP may be developed. The parent then would have the option of enrolling the student in the public school and consenting to

the services on the IEP, or of remaining in the private school. In the latter case, the district's obligation remains limited to considering the student in the group of students potentially eligible to receive services through a services plan.

For students participating in the McKay Scholarship Program, it is important to note that the amount of the scholarship will not change as a result of reevaluation. The amount of funding remains the same over the life of the scholarship.

20. What recourse is available to parents who disagree with a school district's child-find determination?

Child-find is part of the basic obligation of the district to make FAPE available to all students with disabilities enrolled in schools located within the jurisdiction of the district (or, for students not enrolled in a school due to being below school age or homeschooled, who live within the district). As such, the due process procedures described at 34 CFR § 300.504-300.515 apply 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.

Additionally, a formal written complaint alleging that the school district failed to meet the requirements related to parentally-placed private school students with disabilities can be submitted to the Florida Department of Education. A request for mediation also may be submitted to resolve such issues.

21. Can parents of children who are voluntarily enrolled in private school file a request for a due process hearing if the district fails to implement the services plan?

No. Parents who place their child in a private school do not have the right to a due process hearing related to service provision. They can request a due process hearing related to the requirements of child-find, evaluation, and the district's failure to meet with private school personnel regarding service delivery options. Parents can, however, submit a formal written complaint to the Florida Department of Education alleging that the school district failed to implement the services plan.

Funding

22. May Part B funds for equitable services be paid directly to a private school?

No. Part B funds for equitable services may not be paid directly to a private school.

23. May private school officials order or purchase materials and supplies needed for the special education and related services and be reimbursed by an LEA?

No. Private school officials may not obligate or receive Part B funds. The LEA must control

and administer the funds used to provide special education and related services to parentally-placed private school children with disabilities and maintain title to materials, equipment, and property purchased with those funds.

24. May a public agency place equipment and supplies for equitable services in a private school?

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

25. How is the proportionate share for expenditures for services for parentally-placed private school students with disabilities calculated?

Students included in this calculation are students who have been evaluated and determined eligible as students with disabilities in accordance with IDEA 2004 and Florida State Board of Education rules. This includes both students who are and who are not currently receiving services from the district. This count does not include students participating in home education programs under S.1002.41, F.S.

The proportionate share is based on the proportion of eligible parentally-placed private school students to the total eligible population. The first step in the calculation is to determine the number of eligible public school students and the number of eligible parentally-placed private school students. The district then divides its total federal fund allocation by the total eligible public and private school students to obtain a per student calculation. This per student allocation is then multiplied by the number of eligible parentally-placed private school students. The resulting product is the proportionate share of IDEA funding for parentally-placed private school students.

For example, if a school district has determined there are ten eligible parentally-placed private school students and 90 eligible public school students, the total number of eligible students is 100. One hundred is then divided into the district's IDEA, Part B, funding of \$100,000, resulting in a \$1,000 per child cost. The \$1,000 is then multiplied by the ten eligible parentally-placed private school students, resulting in \$10,000 as the district's proportional share of IDEA, Part B, funds for parentally-placed private school students.

26. When are parentally-placed private school students counted?

The IDEA 2004 indicates that parentally-placed private school students (those evaluated and found eligible who may or may not be receiving services) should be counted between October 1 and December 1 of each school year for the purpose of calculating the proportionate share for the following school year.

27. How is the proportionate share to be used?

School districts should spend their proportionate share dollars on services, either direct or indirect, to parentally-placed private school students. These funds may be supplemented by funds from other sources (e.g., Florida Education Finance Program [FEFP]) if the district chooses to spend more than the required amount, but they may not be supplanted (i.e., the district may not claim the students for full time equivalency [FTE] funding to recover the costs of providing services).

28. 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 reevaluation), exists independently from the services provision. Therefore, the costs of child-find activities, including individual evaluations, may not be considered in determining whether an LEA has met the annual expenditure requirement for services for parentally-placed private school children with disabilities under Part B.

29. May the district deduct funds that have been provided to private schools through the McKay Scholarship Program for Students with Disabilities from its proportionate share requirement?

No. The McKay Scholarship Program is financed through FEFP funds. These are state funds and thus cannot be used to fulfill this obligation to expend a portion of the district's IDEA 2004, Part B, allocation. A district may decide to continue to provide to private school students through FTE funds after the proportionate share has been expended. However, this funding method is not applicable for students participating in the McKay Scholarship Program, as the private schools already have received the FTE funds generated by these students. It is important to note, however, that these students must be counted among the total of eligible students with disabilities enrolled in private schools within the jurisdiction of the district.

Reporting

30. Are parentally-placed private school students reported through the automated student database?

Yes. Parentally-placed private school students **who are receiving services** through a services plan should be reported in all surveys. It is recommended that N999 be used as the school of enrollment. *The exceptions to this are McKay students who would be reported under school number 3518.*

31. What about students who are not receiving services?

Under the IDEA 2004, each school district is required to maintain records of the number of parentally-placed private school students evaluated, determined eligible under IDEA, and served. Therefore, each district should maintain records of each of these. Note, however, that only those students who are receiving services should be reported through the automated student database.

32. How should these students be reported for FTE?

Parentally-placed private school students should not be reported for FTE except in cases where the district has expended or can document that all federal funds will be expended and has opted to use FEFP funds to continue services. *The exceptions are McKay students who are reported for FTE.*

Services Provided

33. What types of services must the district provide to private school students?

The specific types of services to be provided are left up to the consultative agreement between the LEA and representatives of private schools. No private school student is entitled to a specific service or amount of service, but the personnel providing the service must meet the same standards as personnel providing the services in the public school.

(34 CFR §300.455(a))

The following are some examples of the way in which a district could elect to provide services to students with disabilities enrolled by their parents in private schools:

- direct special education and related services to some eligible students
- consultative services
- instructional materials
- instructional equipment
- professional development for teachers

34. Can a private school student with a disability, who is not receiving special education, receive related services under a services plan?

Yes. If a parentally-placed private school student has been found to be an eligible student with a disability under IDEA 2004 and in accordance with State Board of Education rules regarding specific areas of disability, then it is possible for the student to receive only related services from the district, if this is in conformity with the consultative agreement between the district and the representatives of the private school. In this case, the services would be documented on a services plan. However, if the student is not an eligible student with a disability as defined under IDEA 2004 and the relevant State Board of Education rules, then the related services could not be provided through the proportionate share.

35. How are assistive technology devices and/or services provided to parentally-placed private school students with disabilities?

If 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 agreement between the private schools and the district, the district may provide them. In this case, they would be provided at no cost to the parent and be documented on a services plan. The district would retain ownership of any assistive technology devices while they are in use in the private school, home, or other setting deemed necessary by the services plan team. It should be noted that Section 1003.575, F.S., which addresses the manner in which agencies may enter into interagency agreements to "...ensure that an assistive technology device issued to a young person as part of his or her individualized family support plan, individual support plan, or an individual education plan remains with the individual through transitions..." does not reference assistive technology devices provided through services plans developed in accordance with districts' proportionate share obligation to parentally-placed private school students.

36. Are there limits to the amount or type of special education or related services that a district may provide to a parentally-placed student in a private school?

No. IDEA 2004 and the implementing regulations at 34 CFR §300.453(d) allow for state and local educational agencies to provide services in excess of those required under Part B, consistent with state law or local policy. It is left to the individual districts to determine what services they may or may not choose to provide that are in excess of the proportionate amount of their federal Part B funds.

37. Where can services be provided?

Services may be provided on-site at the private school, including religiously affiliated private schools; at a public school; or at some other mutually agreeable site.

38. If the services are not provided at the private school, who is responsible for transportation?

If the services are not provided at the private school, and if transportation is required for the student to benefit from or participate in the services provided, then the district must provide transportation. However, the cost of the transportation is included in the proportionate share of funds the district is required to expend. The district is not required to provide transportation between the student's home and the private school.

Services Plans

39. What is a services plan?

Services plan refers to a description of the specific special education and related services the LEA will provide to parentally-placed private school students. This is to distinguish the plan from an IEP, which must include all the services to which a student is entitled for provision of FAPE, if he/she is enrolled in a public school.

To the extent appropriate, a services plan must meet the IEP content requirements of §300.347 and must be developed, reviewed, and revised consistent with the IEP process requirements of §§300.342-300.346, although it need only include information related to those services which the child will receive in accordance with the consultative agreement. More detailed assistance on the development of services plans is included in “Services Plans for Parentally-placed Students with Disabilities” (attached).

40. Following the initial determination that a parentally-placed private school child is an eligible child with a disability under Part B, must the public district develop an IEP for the child?

No. The recommendation in OSEP Memorandum 00-14 is that an IEP be developed for all children determined to be in need of special education services, unless “...the parents make clear their intention to enroll their child at a private school and ... they are not interested in a public program or placement...” In this case, if the student is eligible to receive services from the public agency, a services plan must be developed.

The issue at hand is the availability of FAPE. Because special education and related services requirements and entitlements differ for students placed in public versus private schools, it would be prudent for the LEA to ensure that the child’s parents understand the nature of FAPE that the student would receive as a public school student and that they may make an informed decision regarding their child’s education. It should be noted that case law, not binding in Florida, has supported the requirement that the LEA develop an IEP for the parents to then accept or reject, even when the parent has made clear their intention to enroll their child in a private school, as a way to ensure that FAPE has been made available (Mill Valley Elementary Sch. Dist. v. Eastin, 32 IDELR 140 (N.D. Cal. 1999); Redding Elementary Sch. Dist. v. Goynes, 34 IDELR 118 (E.D. Cal 2001)).

41. What recourse is available when parents disagree with the services the LEA has offered or provided to their child in connection with a parental private school placement?

The due process procedures described at 34 CFR §§ 300.504-300.515 apply to the provision of FAPE to children with disabilities. Because there is no individual entitlement to FAPE for parentally-placed private school students, the due process procedures established under Part B do not apply to complaints involving a district’s failure to comply with certain provisions of the IDEA 2004 relative to the provision of services to parentally-placed private school students, including a challenge to the provision of services indicated on the student’s services plan.

However, a formal written complaint alleging that the school district failed to meet the requirements of §§300.451-300.462 can be submitted to the Florida Department of Education. These requirements include, among other provisions, the development and implementation of a services plan for each private school student with a disability who has been designated to receive special education and related services. Additionally, mediation may be requested to resolve such issues.

Out-of-State Students with Disabilities

42. What is the responsibility of the LEA where the private elementary schools and secondary schools are located to conduct child-find activities for parentally-placed private school children who reside outside the state?

Section 612(a)(10)(A)(i) of the Act makes clear that the LEA 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 children suspected of having a disability. This includes children from other states attending private elementary schools and secondary schools located in the LEA.

43. Who is responsible for determining and paying for services provided to out-of-state parentally-placed private school children with disabilities?

The LEA where the private elementary schools 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 the services to be provided to out-of-state parentally-placed private school children with disabilities. These out-of-state children 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.

McKay Scholarships for Students with Disabilities Program

44. What are the obligations of LEAs to students participating in the McKay Scholarship for Students with Disabilities Program?

Although the private schools participating in the McKay Scholarship Program receive the full amount of weighted funding generated through the Florida Education Finance Program (FEFP) that would have been allotted to the public school had the student enrolled there, school district obligations to parentally-placed private school students apply to the expenditure of federal funds provided through IDEA 2004, Part B. Therefore, students participating in the McKay Scholarship for Students with Disabilities Program are considered to be parentally-placed private school students under IDEA 2004. As such, the district's obligation to these students is the same as it is to all parentally-placed private school students with disabilities attending private schools located within the district. They must be considered among the students who potentially are eligible to receive services from the district, and all child-find obligations apply.

As noted in question #15 above, prior to the implementation of IDEA 2004, the district of origin for students participating in the McKay Scholarship Program for Students with Disabilities maintained the responsibility for conducting reevaluations for those students, regardless of any changes in the student's district of residence. In response to the change in IDEA 2004, assigning child-find responsibility to the district in which the private school is located, the requirement for McKay Scholarship students also has been revised. Districts are now responsible for conducting child-find activities for all students with disabilities who attend private schools located within the district, including McKay Scholarship students.

45. Is a services plan required for students whose parents have used the McKay Scholarships for Students with Disabilities Program to place their child in a private school?

A services plan is only required for parentally-placed private school students who are receiving services through the district. A services plan is not required for services provided by the private school. If the district determines that a given McKay Scholarship participant will be provided services through its proportionate share obligation, this would be reflected on a services plan.

Other

46. Must a school district provide services to homeschooled students?

No. Under IDEA 2004 and the implementing regulations, if state law regards homeschooling as parental placement at private school, then the same protections would be provided as are provided to other parentally-placed students. Florida does not identify homeschooled students in this way, so it is up to individual districts to make determinations regarding the type or quantity of services they choose to provide. Traditionally, in this state, homeschooled students have been able to access special education and related services within the public schools according to individual agreements with the districts.

As students residing in the jurisdiction of the school district, however, homeschooled students and those enrolled in family childcare must be included in the child-find activities to identify, locate, and evaluate students with disabilities who are in need of special education and related services. The district must ensure that FAPE is available if their parents choose to enroll them in public schools.

47. Must a school district provide services to gifted students enrolled in private schools by their parents?

No. This obligation applies only to students with disabilities. However, districts may elect to provide services to gifted students who are enrolled in private schools or who are homeschooled.

48. Are parentally-placed private school students eligible to receive services through the district's program for students who are hospitalized or homebound (H/H)?

To receive services through the H/H program, the student must be enrolled in the public school district. A private school student in need of H/H services who is not otherwise a student with a disability (i.e., not eligible for another disability program) must enroll in the school district prior to referral for H/H services. However, if the student meets criteria for another program for students with disabilities under State Board of Education rules (i.e., Rules 6A-6.03011, 6A-6.03016, 6A-6.03018, 6A-6.03021, 6A-6.03023, and 6A-6.03027, (FAC), the referral for H/H services may be made prior to enrollment. Once a student is found eligible for H/H services and an IEP is developed, the parent must provide written informed consent for services and the student will be enrolled in the school district.

49. Will receipt of H/H services from the school district have an effect on a student's eligibility for voucher or scholarship programs?

It may. A student who enrolls in the public school system to receive H/H services forfeits eligibility for the McKay Scholarship Program. To access the McKay Scholarship Program again the student must meet the statutory requirements for eligibility again (i.e., having a current IEP; having been enrolled in a public school district for funding for the preceding Florida Education Finance Program October and February surveys).

ATTACHMENT

Services Plans for Parentally-placed Students with Disabilities

The Individuals with Disabilities Education Improvement Act (IDEA 2004) establishes services plans as the method of documenting the services that will be provided to students with disabilities placed by their parents in private school. IDEA 2004 requires that the district consult with the private schools to determine what type of services the district will provide to eligible parentally-placed students with disabilities.

The purpose of this Technical Assistance Paper (TAP) is to provide guidance regarding IDEA 2004 requirements related to services plans for students with disabilities. The responsibilities and requirements that are involved with developing services plans are delineated at 300.454 to 300.457 of Title 34 of the Code of Federal Regulations (Title 34).

1. Do all eligible special education students placed in private schools by their parents require a services plan?

No. The services plan is required only for students with disabilities who the district has elected to serve at any given private school. The plan must reflect only the specific services the district will provide.

2. Must the student's services plan address all the student's areas of need?

No. Once the agreement has been reached by both the private schools and the district regarding student needs and the type of services to be provided, then that is the service that is provided to eligible students by the district, regardless of other needs the student may have.

3. What are the required components of a services plan?

The services plan must, to the extent appropriate, meet the requirements described in 34 CFR 300.347 and must be developed, reviewed, and revised consistent with §300.342-300.346 of the regulations. The comments section of the federal regulations that addresses services plans indicates that in “almost all instances” the services plan would have to address the following components:

- evidence that the services plan team members considered the following:
 - ☞ the student's name
 - ☞ the strengths of the student and the concerns of the parents for enhancing the education of the student
 - ☞ the results of the initial or most recent evaluation
 - ☞ the results of the student's performance on any general state or district-wide assessment if appropriate
 - ☞ in the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, and supports to address that behavior
 - ☞ in the case of a student with limited English proficiency, the language needs of the

student as they relate to the student's plan

- in the case of the student who is blind or visually impaired, provide for instruction in braille and the use of braille unless the services plan team determines, after an evaluation of the student's reading and writing skills, that instruction in braille or the use of braille is not appropriate for the student
- the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including direct instruction in the child's language and communication mode
- whether the child needs assistive technology devices and services
- whether the services plan is accessible to each regular education teacher, special education teacher, related services provider, and other service providers who are responsible for the implementation of the plan
- that each person is informed of specific responsibilities related to implementing the services plan, including specific accommodations, modifications, and supports that must be provided for the student
- a statement of the student's present levels of performance, including how the disability affects the student's involvement and progress in the general curriculum
- a statement of measurable annual goals, including benchmarks or short term objectives related to meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general curriculum, and meeting each of the student's other needs that result from the student's disability
- a statement of the specially designed instruction/special education and related services and supplementary aids and services to be provided to the student, or on behalf of the student
- a statement of program modifications or supports for school personnel that will be provided for the student to advance appropriately towards attaining the annual goals, to be involved in and progress in the general curriculum, and to be educated with other children with and without disabilities
- an explanation of the extent to which the student will not participate with nondisabled peers in the regular class
- the projected date for the beginning of the specially designed instruction/special education and related services and modifications provided, and the anticipated frequency, location, and duration of those services and modifications
- a statement of how the student's progress towards annual goal(s) will be measured and how parents are going to be regularly informed of the student's progress towards the annual goals, at least as often as the parents of nondisabled student, and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the school year
- if transition services are provided, beginning at age 14, and updated annually, a statement of the transition service needs of the student related to applicable components of the services plan that focuses on the student's courses of study (such as participation in a vocational education program)
- if transition services are provided, beginning at age 16 (or younger if determined by the services plan committee), a statement of needed transition services including, when appropriate, a statement of the interagency responsibilities or any needed linkages

- a statement of the transfer of rights to the student beginning at least one year before the student's eighteenth birthday

4. Does this mean that the services plan need not address accommodations for and participation in state and district assessment, extended school year (ESY) services, and transition services?

These components would be considered as part of the negotiated services that could be provided by the district but are not required. If they are not the selected services, then the answer is no, these items need not be addressed in a services plan. It is important to note that the decision regarding a student's need for ESY services must be based on whether the provision of FAPE to the student will be jeopardized if ESY services are not provided. Because parentally-placed private school students do not retain an individual right to FAPE, this issue need not be addressed unless the district chooses to provide such services through its proportionate share obligation.

5. Who is required to be at the services plan meeting?

Requirements related to the composition of the services plan team are the same as the requirements for IEP teams. The services plan team must include:

- the parents of the student
- at least one regular education teacher of the student (if the student is participating in the regular curriculum)
- at least one special education teacher
- a representative of the district who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the school district (the representative, at the discretion of the district, may be the special education teacher if the teacher meets the requirements)
- an interpreter of instructional implications of evaluation results (note: this person may also be the regular education teacher, ESE teacher, or district representative as required above)
- a representative from the private school
- other individuals with knowledge/expertise regarding the education of the student (including related services personnel as appropriate)
- the student, whenever appropriate

6. Do the requirements for parent participation differ between services plans and IEPs?

No. The requirements for parent participation apply to both services plans and IEPs. Therefore, districts must afford parents the opportunity to participate in the development of services plans, in a manner consistent with their procedures for parent participation in IEP meetings.

7. Is the district responsible for initiating the services plan meeting?

Yes. The district is responsible for initiating the services plan meeting and ensuring that a

representative from the private school and the parents are involved with the development of the services plan. If a representative from the private school cannot attend, the school district must use other methods to ensure their participation. Examples of this include telephone calls, conference calls, written requests, or other means to document that the private school representative's concerns were considered when developing the services plan.

8. When must the services plan be in effect?

At the beginning of each school year, the district must have a services plan in effect for each student with a disability who will be receiving services from the district. The services plan must:

- be in effect before special education and related services are provided to an eligible student and must be implemented as soon as possible following the services plan meeting
- be accessible to each regular education teacher, special education teacher, related service provider, and other service providers who are responsible for its implementation.