

Questions and Answers On Serving Children With Disabilities Placed by Their Parents at Private Schools

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The obligation of states and local education agencies (LEAs) to children with disabilities enrolled by their parents in private elementary schools and secondary schools changed on July 1, 2005, the effective date of these provisions in the *Individuals with Disabilities Education Improvement Act of 2004* (Act). Section 612(a)(10)(A)(i)(II) of the Act requires that the LEA, after timely and meaningful consultation with private school representatives, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools *located in the LEA* [emphasis added]. In addition, section 612(a)(10)(A)(i) of the Act makes clear that the obligation to spend a proportionate amount to provide services to children with disabilities enrolled by their parents in private schools now refers to children enrolled by their parents in private elementary schools and secondary schools “in the school district served by a local education agency.” Because these are significant changes in policy, the Department issued a memorandum to all states on June 27, 2005, informing them of these changes. The purpose of the questions and answers below is to provide additional guidance to states and LEAs in complying with the requirements in Section 612(a)(10) of the Act. We anticipate posting additional questions and answers in the future regarding the responsibilities of states and LEAs to serve parentally placed private school children with disabilities.

The Department wants to stress that the following questions and answers do not address all the provisions in Section 612(a)(10) of the Act. States are bound by all the provisions in the Act and, until the final regulations are in effect, the existing regulations that are not inconsistent with the Act. If there is an inconsistency between the statutory provisions in the Act and the provisions in the current regulations (i.e., the 1999 regulations implementing the Individuals with Disabilities Education Act Amendments of 1997 (*IDEA 97*), the provisions in the Act would supersede those in the current regulations. In addition, the final regulations, which will specify an effective date, will supersede current regulations and any Departmental guidance pertaining to the Act provided prior to the effective date of the final regulations, including the guidance in the questions and answers that follow.

A. Consultation With Private School Representatives and Representatives of Parents of Parentally Placed Private School Children With Disabilities

Authority: The requirements for consultation are in Section 612(a)(10)(A)(i)(II) and 612(a)(10)(A)(iii) through (v) of the Act.

Question A-1: What is consultation?

Answer: Consultation involves discussions between the LEA, private school representatives, and representatives, as defined in the Act, of parents of parentally placed private school children with disabilities on key issues that affect the ability of eligible private school children with disabilities to participate equitably in federally funded special education and related services. (See more on the provision of equitable services in Part C of these questions and answers.) Effective consultation provides a genuine opportunity for all parties to express their views and to have those views considered by the LEA. Successful consultation establishes positive and productive working relationships that make planning easier and ensure that the services provided meet the needs of eligible parentally placed private school children with disabilities.

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

Question A-2: What must the consultation process include?

Answer: Section 612(a)(10)(A)(iii) of the Act provides that each LEA must consult, in a timely and meaningful way, with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for parentally-placed private school children. The public agency must consult with private school representatives and representatives of parents of parentally placed private school children with disabilities. The consultation process must include 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 share of federal funds available to serve parentally placed private school children with disabilities,

including the determination of how the proportionate share of those funds was calculated;

- How the consultation process among representatives of the agency, private school and of parents of parentally placed private school children will take place, including how the process will operate throughout the school year to ensure that parentally placed private school children 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 children—and how and when these decisions will be made; and
- How, if the LEA representatives disagree 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.

Question A-3: What records on consultation must an LEA maintain?

Answer: When timely and meaningful consultation has occurred, the LEA must obtain a written affirmation signed by the representative of the participating private school. 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 state education agency (SEA).

Question A-4: Do private school officials have the right to complain?

Answer: A private school official has the right to complain to the SEA that the LEA did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official. A complaint must provide the basis of the official's belief that the LEA did not comply with the consultation requirements. The LEA must forward to the SEA appropriate documentation. If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the secretary of the U.S. Department of Education providing the basis of the official's belief that the LEA did not comply with the consultation requirements, and the SEA must forward the appropriate documentation to the secretary.

B. Child Find and Individual Evaluations

Authority: The requirements for child find and individual evaluations are in Section 612(a)(10)(A)(i)(II) and (V), 612(A)(10)(a)(ii) and 614(a) of the Act.

Question B-1: Which LEA is responsible for conducting child find for parentally placed private school children?

Answer: The LEA where the private school is located. Section 612(a)(10)(A)(i)(II) of the Act makes clear that the LEA, after timely and meaningful consultation with private school representatives, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools *located in the LEA*. [Note: Under the prior provisions of the IDEA, the responsibility to conduct child find to parentally-placed private school children rested with *the LEA in which the children resided*.]

Question B-2: How does the LEA meet its child find responsibilities to parentally placed private school children?

Answer: The LEA where the private elementary school or secondary school is located has options as to how it ensures its child find responsibilities are met. For example, it may assume the responsibility itself, contract with another public agency or make other arrangements. The Act does not permit parentally placed private school children to be excluded from child find activities.

Question B-3: What is the purpose of child find for parentally placed private school children?

Answer: The child find process for such children must be designed to ensure the equitable participation of parentally placed private school children with disabilities and must ensure an accurate count of these children.

Question B-4: What specific child count information must the LEA maintain and report to the SEA?

Answer: The LEA must maintain in its records and provide to the SEA the number of parentally-placed private school children evaluated, the number of parentally-placed private school children determined to be children with disabilities under Part B of the Act, and the number of children provided equitable services.

Question B-5: Why is it important to identify the number of parentally-placed private school children with disabilities located in the LEA where the private school is located?

Answer: An accurate count of the number of eligible private school children with disabilities enrolled by their parents in private schools located in the LEA is needed to calculate the proportionate share of Part B funds that the LEA must expend annually for services for parentally-placed private school children with disabilities.

Question B-6: Must the child find activities and the evaluation procedures for parentally-placed private school children be similar to the child find activities and evaluation procedures for children enrolled in public schools?

Answer: Yes. The child find activities carried out by LEAs for parentally-placed private school children must be similar to activities undertaken for child find for children in public schools. Activities for child find must be completed in a time period comparable to those activities for public school students. This means that LEAs may not delay conducting child find, including individual evaluations, for parentally-placed private school children until after child find for public school children is conducted. In addition, evaluations of all children suspected of having disabilities under Part B of the Act, regardless of whether they are enrolled by their parents in private elementary schools or secondary schools, must be conducted in accordance with the requirements in Section 614(a) of the Act, which describes the procedures for evaluations and reevaluations for all children with disabilities.

Question B-7: Can 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?

Answer: No. There is a distinction under the Act between the obligation to conduct child find activities, including individual evaluations, for parentally placed private school children with disabilities, and the obligation to use an amount of funds equal to a proportionate amount of the federal grant to provide special education and related services to parentally placed private school children with disabilities. The obligation to conduct child find, including individual evaluations, exists independently from the services provision; and the costs of child find activities, such as evaluations, may not be considered in determining whether the LEA has spent an appropriate amount on providing special education and related services to parentally placed private school children with disabilities.

Question B-8: In conducting the individual evaluations of suspected children with disabilities enrolled in private schools by their parents, may an LEA exclude children suspected of having certain disabilities, such as those with specific learning disabilities?

Answer: No. The LEA where private elementary schools and secondary schools are located must identify and evaluate all children suspected of having a disability as defined under Section 602(3) of the Act. LEAs may not exclude children suspected of having certain disabilities, such as those with specific learning disabilities, from their child find activities. The Department recommends that LEAs and private elementary schools and secondary schools consult on how best to implement the state's evaluation criteria for identifying children with specific learning disabilities enrolled in private schools by their parents.

Question B-9: Which LEA is responsible for ensuring that a reevaluation of each parentally placed private school child with a disability is conducted at least once every three years?

Answer: The LEA where the private elementary school or secondary school is located is responsible for conducting reevaluations of children with disabilities enrolled by their parents in the private elementary schools and secondary schools located within the district.

C. Provision of Services

Authority: The requirements for the provision of equitable services are in Section 612(a)(10)(A)(i) and (iii) (V) of the Act, and current 34 CFR §§300.452 through 300.454(a), (b)(4) and (c), and 300.455 through 300.462.

Question C-1: What is the process for making decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities?

Answer: After consultation with private schools representatives and representatives of parents of parentally placed private school children with disabilities, the LEA is responsible for making final decisions about all aspects of the services to be provided to parentally placed private school children with disabilities. However, if the 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.

Question C-2: Are there any particular kinds of services or specified amounts of services that must be provided to parentally placed private school children with disabilities under Part B of the Act?

Answer: No. Children with disabilities enrolled in private schools by their parents have no individual entitlement to receive some or all of the special education and related services they would receive if enrolled in a public school other than child find, including evaluations. Under the Act, LEAs have the obligation to provide the group of parentally placed private school children with disabilities with equitable participation in the services funded with federal *IDEA* funds.

Question C-3: May an LEA provide additional services to parentally placed private school children in excess of the required federal equitable participation services requirement that is covered by the federal proportionate share?

Answer: Yes. The Act in no way prohibits states or LEAs from spending additional state or local funds to provide special education or related services to parentally-placed private school children with disabilities in excess of those required in Section 612(a)(10)(A) of the Act, consistent with state law or local policy.

Question C-4: Prior to the reauthorization of *IDEA*, if a state were spending more than the federal proportionate share of funds using state funds, then the state would not have to spend any federal dollars on parentally placed private school children. Is this permissible under the Act?

Answer: No. *IDEA 2004* added a “supplement, not supplant” requirement in Section 612(a)(10)(A)(i)(IV) of the Act. This requirement provides that state and local funds may supplement but in no case supplant the proportionate amount of the federal *IDEA* funds required to be expended under this provision.

Question C-5: What is the process for developing a services plan for a parentally placed private school child with a disability?

Answer: Each parentally placed private school child with a disability who has been designated by the LEA in which the private school is located to receive special education or related services must have a services plan. The services plan describes the specific special education or related services that the LEA will provide to the child. 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. This provides the opportunity for private school staff to learn more about the child's strengths and needs.

Question C-6: What is the difference between an individualized education program (IEP) and a services plan?

Answer: Children with disabilities enrolled in public schools or who are publicly-placed in private schools are entitled to a free appropriate public education (FAPE) and must receive the full range of services under Part B that are determined by the child’s IEP team to be necessary to meet the child’s individual needs and provide FAPE. The IEPs for these children generally will be more comprehensive than the more limited services plans developed for parentally-placed private school children with disabilities designated to receive services. A services plan should reflect only the services offered to a parentally placed private school child with a disability designated to receive services and must, to the extent appropriate, meet the IEP content requirements described in Section 614(d) of the Act, or, when appropriate, for children aged three through five, the Individual Family Services Plan (IFSP) requirements described in Section 636(d) of the Act as to the services that are to be provided.

Question C-7: Who provides equitable services to parentally placed private school children with disabilities?

Answer: Equitable services must be provided by employees of a public agency or through contract by the public agency with an individual, association, agency, organization or other entity. An LEA may use Part B funds to make public school personnel available in other than public facilities to the extent necessary to provide equitable services for private school children with disabilities and if those services are not normally provided by the private school. 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.

Question C-8: Where may equitable services be provided to parentally placed private school children with disabilities?

Answer: Services offered to parentally-placed private school children with disabilities may be provided on-site at a child's private school, including a religious school, to the extent consistent with law, or at another location. In the interests of the child, efforts should be made to provide services as near as possible to the child's private school so as not to unduly disrupt the child's education experience. The phrase "extent consistent with law" is statutory, and we interpret it to mean that the provision of services on the premises of a private school takes place in a manner that would not violate the Establishment Clause of the First Amendment to the U.S. Constitution and would not be inconsistent with applicable state constitutions or law.

Question C-9: How is the location where services will be provided to parentally placed private school children with disabilities determined?

Answer: The location of services is one of the subjects discussed during the consultation process among LEA officials, private school representatives, and representatives of parents of parentally placed private school children with disabilities. The public agency makes the final decision, after this consultation process.

Question C-10: May private school officials order or purchase materials and supplies needed for the special education and related services and be reimbursed by an LEA?

Answer: 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.

Question C-11: May a public agency place equipment and supplies for equitable services in a private school?

Answer: 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.

Question C-12: May Part B funds for equitable services be paid directly to a private school?

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

Question C-13: May Part B funds for equitable services be used for repairs, minor remodeling or construction of private school facilities?

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

D. Preschool Children With Disabilities

Question D-1: Do the child find and equitable participation requirements apply to children with disabilities, aged 3 through 5, enrolled by their parents in private elementary schools?

Answer: Yes, under certain conditions. The requirements in Section 612(a)(10) of the Act regarding child find and equitable participation are fully applicable to children with disabilities aged 3 through 5 enrolled by their parents in private elementary schools. A private preschool or day care program is considered an elementary school if it meets the definition of elementary school in Section 602(6) of the Act. The Act defines an elementary school as a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

E. Out-of-State Students With Disabilities

Question E-1: 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?

Answer: 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.

Question E-2: Who is responsible for determining and paying for services provided to out-of-state parentally placed private school children with disabilities?

Answer: 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.

F. Miscellaneous Questions

Offer of a Free Appropriate Public Education (FAPE)

Question F-1: If a parentally placed private school child is identified through the child find process as a child eligible for special education and related services, which LEA is responsible for offering FAPE to a parentally placed private school child with a disability?

Answer: If a determination is made that a child has a disability and needs special education and related services, the LEA where the child resides is responsible for making FAPE available to the child. If the parents make clear their intention to keep their child enrolled in the private elementary school or secondary school, the LEA of residence need not develop an IEP for the child.

Home Schooled Children With Disabilities

Question F-2: Are home schooled children considered parentally placed private school children?

Answer: Whether home schooled children with disabilities are considered parentally placed private school children with disabilities is determined by the state. If the state recognizes home schools or home day care as private elementary schools and secondary schools, children with disabilities in those home schools or home day care must be treated in the same way as other parentally placed private school children with disabilities.

Procedural Safeguards

Question F-3: If the LEA where the private elementary or secondary school is located conducts an individual evaluation on a child and the parents disagree with the evaluation and wish to have an independent educational evaluation (IEE) conducted, to which LEA must the parents bring their request – the LEA where the private school is located, or the LEA where the child resides?

Answer: Parents should file the request for an IEE with the LEA that conducted the evaluation with which the parents disagree.