

# **Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools**

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Revised April 2011

Regulations for Part B of the Individuals with Disabilities Education Act (IDEA) were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006. Since publication of the regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as important issues arise or to amend existing questions and answers as needed.

OSERS issues this Q&A document to provide State educational agencies (SEAs), local educational agencies (LEAs), parents, advocacy organizations, and other interested parties with information regarding the requirements for serving children with disabilities placed by their parents in private schools. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

The IDEA and its implementing regulations contain a number of significant changes for parentally placed private school children with disabilities. Section 612(a)(10)(A) of the IDEA and 34 CFR §§300.130 through 300.144 now require that the LEA, after timely and meaningful consultation with private school representatives, conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools *located within the LEA* regardless of where those students *live*. These requirements make clear that the obligation to spend a proportionate amount of IDEA Part B funds 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 educational agency.” Other key changes relate to the consultation process, calculation of the proportionate share, and standards applicable to personnel providing equitable services.

This Q&A document supersedes the Department's guidance, entitled *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools* issued in March 2006 and January 2007 and include additional topics that have arisen as the field has implemented the regulations. Some of the new questions reflect recent policy letters that have been issued, while others address common questions that OSEP receives. New topics include:

- Location of Services and Transportation—addressing how an LEA determines where equitable services are provided and whether transportation is required.

- Property, Equipment, and Supplies—addressing whether Part B funds for equitable services may be used to place equipment and supplies in a private school or be used for repairs, minor remodeling, or construction of private school facilities.
- Out-of-State Children with Disabilities—addressing the responsibility for determining and paying for services provided to out-of-State parentally placed private school children with disabilities.
- Home-Schooled Children with Disabilities—addressing child find and services for children with disabilities who are home-schooled.
- Children in For-Profit Private Schools—addressing whether children enrolled in a for-profit private school are counted in determining the proportionate share and whether they are eligible to receive equitable services.

In addition to these new topics, questions have been added to address the consultation process, response to intervention (RTI), the process for developing a services plan, the difference between a services plan and an individualized education program (IEP), child find, and child count.

Generally, the questions, and corresponding answers, presented in this Q&A document required interpretation of the IDEA and its implementing regulations and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As in this document are not intended to be a replacement for careful study of the IDEA and its implementing regulations. The IDEA, its implementing regulations, and other important documents related to the IDEA and the regulations are found at <http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C>.

If you are interested in commenting on this guidance, please e-mail your comments to [OSERSguidancecomments@ed.gov](mailto:OSERSguidancecomments@ed.gov) and include Private Schools in the subject of your e-mail or write us at the following address: Ruth Ryder, U.S. Department of Education, Potomac Center Plaza, 550 12<sup>th</sup> Street, S.W., room 4108, Washington, DC 20202.

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

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**Authority:** The requirements for consultation are found in 34 CFR §300.134.

**Question A-1:** What is consultation?

**Answer:** As used in the regulations, consultation is a mandatory process that involves discussions between the LEA, private school representatives, and representatives of parents of parentally placed private school children with disabilities on key issues relating to the equitable participation of eligible private school children with disabilities in federally funded special education and related services. (See more on the provision of equitable services in Parts C and D of these questions and answers.) Each LEA (or, if appropriate, an SEA) 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. Effective consultation provides a genuine opportunity for all parties to express their views and to have those views considered by the LEA before the LEA makes any decision that has an impact on services to parentally placed private school children with disabilities. Timeliness is critical to effective consultation and requires collaboration between the LEA and private school officials in developing a timeline and selecting dates for consultation. 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; as such an offer does not meet the basic requirements of the consultation process. Only after discussing key issues relating to the provision of special education and related services with all representatives may 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:** Apart from specifying certain topics that must be addressed during consultation, the regulations offer LEAs and private schools a great deal of flexibility in conducting the consultation process. However, in accordance with 34 CFR §300.134, discussion between public school and private school officials must address--

- 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, the private schools, and the 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 the services will be apportioned if funds are insufficient to serve all children--and how and when decisions regarding services 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.

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

**Answer:** When timely and meaningful consultation has occurred, the LEA must maintain documentation that the consultation has occurred, including a written affirmation signed by the representatives of the participating private schools, as required by 34 CFR §300.135. Some have asked if signing an attendance sheet at a meeting is all that is needed to document adequately

that timely and meaningful consultation has occurred. Though these attendance sheets provide an accounting of who has attended meetings, the sheets themselves do not provide evidence that ongoing consultation has occurred. Therefore, the written affirmation signed by the representatives of the participating private schools should reflect that those officials have indeed participated in timely and meaningful consultation that has continued throughout the school year. If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

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**Question A-4:** How can the consultation process be carried out effectively? Are there any consultation models available?

**Answer:** There are a number of ways to carry out the consultation process. As such, the Department does not endorse any specific consultation model. Examples of consultation practices that have proven to work for LEAs include establishing a private school working group to serve as the vehicle for ongoing consultation. In selecting members for this group, LEAs may contact larger private school organizations such as the Catholic Schools Office in the local diocese or the Board of Jewish Education for the region. Groups such as these can help facilitate communication between their member schools and the LEAs in which they are located. Also, establishing a timeline for consultation can help ensure that timely and meaningful consultation occurs throughout the school year. The timeline can include meeting dates and times as well as topics to be discussed.

In addition, in February, 2008 the Office of Non-Public Education published a booklet entitled *The Individuals With Disabilities Education Act (IDEA): Provisions Related to Children With Disabilities Enrolled by Their Parents in Private Schools*, which explains the provisions related to, and benefits available to, children with disabilities who are enrolled by their parents in private schools when a free appropriate public education (FAPE) is not at issue. A copy of this booklet can be found at:

<http://www2.ed.gov/admins/lead/speced/privateschools/index.html>.

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## B. Child Find and Individual Evaluations

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**Authority:** The requirements for child find for parentally placed private school children with disabilities are found in 34 CFR §300.131.

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

**Answer:** Under 34 CFR §300.131, the LEA where the private school is located is responsible for conducting child find for parentally placed private school children. The child find requirements for parentally placed children make 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*. (Under the prior provisions of the IDEA, the responsibility to conduct child find for parentally placed private school children rested with *the LEA in which the children resided*.)

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**Question B-2:** What are the LEA's responsibilities for identifying children with disabilities placed by their parents in private schools?

**Answer:** Under 34 CFR §300.131, the LEA is responsible for locating, identifying, and evaluating all children with disabilities who are enrolled by their parents in private, including religious, elementary schools, as defined in 34 CFR §300.13, and secondary schools, as defined in 34 CFR §300.36, located in the LEA. The LEA, in conducting child find for parentally placed private school children with disabilities, must undertake activities similar to activities undertaken for the agency's public school children. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA. The LEA where the private elementary or secondary school is located has a number of options as to how it meets its child find responsibilities. For example, the LEA may assume the responsibility itself, contract with another public agency (including the public agency where the child resides), or make other arrangements by contracting with a third party to conduct child find activities.

Child find is an ongoing process. Therefore, if a child who enters a private school without having been previously identified as a child with a disability is suspected of having a disability during the school year, the LEA where the private school is located is responsible for ensuring such a child is identified, located, and evaluated. In addition, it is possible that a

child who was previously evaluated and determined not eligible for special education and related services by another LEA, may in fact be determined eligible for special education and related services at a later time through the child find process conducted by the LEA where the private school is located.

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**Question B-3:** May an LEA require a private school to implement a response to intervention (RTI) process before evaluating parentally placed private school children?

**Answer:** No. The IDEA and its implementing regulations in 34 CFR §§300.301–300.311 establish requirements with which LEAs must comply when conducting an initial evaluation to determine if a child qualifies as a child with a disability under Part B; these requirements do not apply to private schools. IDEA requires States to adopt criteria for determining whether a child has a specific learning disability, as defined in 34 CFR §300.8(c)(10), and these criteria must permit, among other things, the use of a process based on the child’s response to scientific, research-based intervention (known as RTI). 34 CFR §300.307(a)(2). Thus, although IDEA permits the use of RTI in evaluating children suspected of having learning disabilities, it does not require LEAs to use RTI. Even if a State’s criteria permit LEAs to use RTI in evaluating children suspected of having learning disabilities, IDEA does not require an LEA to use RTI for parentally placed children attending private schools located in its jurisdiction. It would be inconsistent with the IDEA evaluation provisions in 34 CFR §§ 300.301-300.311 for an LEA to delay the initial evaluation because a private school has not implemented an RTI process with a child suspected of having learning disabilities and has not reported the results of that process to the LEA.

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**Question B-4:** Is it possible for a parent to request evaluations from the LEA where the private school is located as well as the district where the child resides?

**Answer:** The Department recognizes that there could be times when parents request that their parentally placed child be evaluated by different LEAs if the child is attending a private school that is not in the LEA in which the child resides. For example, because most States generally assign the responsibility for making FAPE available to the LEA in which the child’s parents reside, and because that could be an LEA that is different from the LEA in which the child’s private school is located, parents could ask two different LEAs to evaluate their child for different purposes at the same time. The Department, however, does not encourage this practice.

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Note that a new requirement in 34 CFR §300.622(b)(3) requires parental consent for the release of information between LEAs about parentally placed private school children. Therefore, as a practical matter, one LEA may not know that a parent also requested an evaluation from another LEA. However, the Department does not believe that the child's best interests would be served if parents request evaluations of their child by the resident LEA and the LEA where the private school is located, even though these evaluations are conducted for different purposes. Subjecting a child to repeated testing by separate LEAs in close proximity of time may not be the most effective or desirable way to ensure that the evaluations are meaningful measures of whether a child has a disability, or of obtaining an appropriate assessment of the child's educational needs. Although the Department discourages parents from requesting evaluations from two LEAs, if the parent chooses to request evaluations from the LEA responsible for providing the child FAPE and from another LEA that is responsible for considering the child for the provision of equitable services, both LEAs are required to conduct an evaluation.

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**Question B-5:** Does the LEA where the private school is located have an obligation to make an offer of a free appropriate public education (FAPE)?

**Answer:** The LEA where a child attends private school is responsible for ensuring equitable participation. If a parentally placed private school child also resides in that LEA, then the LEA would be responsible for making FAPE available to the child, unless the parent makes clear his or her intent to keep the child enrolled in the private elementary or secondary school located in the LEA. If a parentally placed private school child resides in a different LEA, the district in which the private elementary or secondary school is located is not responsible for making FAPE available to that child, but the LEA of the child's residence would be responsible for making FAPE available to that child..

If a determination is made through the child find process by the LEA where the private school is located that a child needs special education and related services and a parent makes clear his or her intent to keep the child enrolled in the private elementary or secondary school located in another LEA, the LEA where the child resides is not required to make FAPE available to the child. However, if the parents choose to accept the offer of FAPE and enroll the child in a public school, then the LEA where the child resides is obligated to make FAPE available to the child.

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**Question B-6:** 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.

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**Question B-7:** What specific child count information must the LEA maintain and report to the SEA?

**Answer:** The regulations in 34 CFR §300.132(c) require the LEA to 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 IDEA, and the number of children who are provided equitable services.

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**Question B-8:** What are the LEA's responsibilities for reevaluations of parentally placed children?

**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 in the LEA. Under 34 CFR §300.303, an LEA must ensure that a reevaluation of each child with a disability is conducted if (1) the LEA determines that the child's educational or related services needs, in light of the child's academic achievement and functional performance, warrant a reevaluation; or (2) the child's parent or teacher requests a reevaluation. A reevaluation may occur not more than once a year, unless the parent and LEA agree otherwise; and must occur at least once every three years, unless the parent and LEA agree that a reevaluation is unnecessary.

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**Question B-9:** What is the difference between child find under 34 CFR §§300.111 and 300.131?

**Answer:** The child find provision in 34 CFR §300.111 addresses the responsibility of a State to conduct child find for all children with disabilities residing in the State, including children with disabilities attending private schools. It ensures that all children with disabilities residing in the State are

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identified, located, and evaluated. Section 300.111, which applies to States, is much broader in scope than §300.131.

The child find provision in 34 CFR §300.131 addresses the responsibility of the LEA where the private school is located to conduct child find for all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the LEA. This provision addresses which children enrolled in private elementary schools and secondary schools by their parents are eligible to receive services under the IDEA.

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**Question B-10:** May amounts expended for child find, including individual evaluations, be deducted from the required amount of Federal funds to be expended on services for parentally placed private school children with disabilities?

**Answer:** No. There is a distinction under the IDEA 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 an LEA's subgrant 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 obligation to provide equitable services. 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. See 34 CFR §300.131(d).

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**Question B-11:** In conducting the individual evaluations of children suspected of having disabilities who are 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 enrolled in those schools who are suspected of having a disability as defined under 34 CFR §300.8. 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 consult with officials from private elementary schools and secondary schools on how best to implement the State's evaluation criteria for identifying children with specific learning disabilities enrolled in private schools by their parents.

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**Question B-12:** 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 would request an IEE from the LEA that conducted the evaluation with which the parents disagree.

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### C. Equitable Services

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**Authority:** The requirements for equitable services are found in 34 CFR §§300.132, 300.137, and 300.138.

**Question C-1:** What is the definition of the term “equitable services”?

**Answer:** Equitable services are services provided to parentally placed private school children with disabilities in accordance with the provisions in the IDEA and its implementing regulations in 34 CFR §§300.130 through 300.144.

Under the IDEA, LEAs have an obligation to provide parentally placed private school children with disabilities an opportunity for equitable participation in the services funded with Federal Part B funds that the LEA has determined, after consultation, to make available to its population of parentally placed private school children with disabilities. The amount of Part B funds available for these services is based on the proportionate share calculation, which is discussed in the Expenditures section of this document,

The consultation process is important to ensure the provision of equitable services. How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities is determined during the consultation process. See 34 CFR §300.134(d).

Equitable services for a parentally placed private school child with a disability must be provided in accordance with a services plan. A services plan must describe the specific special education and related services that will be provided to a parentally placed private school child with disabilities designated to receive services. See 34 CFR §300.138(b). The regulations in 34 CFR §300.137(a) explicitly provide that children with disabilities enrolled by their parents in private schools do not have an individual right to receive some or all of the special education and related services they would receive if enrolled in the public schools.

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**Question C-2:** Who provides equitable services to parentally placed private school children with disabilities?

**Answer:** The regulations in 34 CFR §300.138(c) clarify that 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 non-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. See 34 CFR §300.142(a). 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. See 34 CFR §300.142(b).

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## D. Provision of Services

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**Authority:** The requirements for provision of services are found in 34 CFR §§300.130, 300.132, 300.137(a), and 300.138.

**Question D-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:** Timely and meaningful consultation must occur before any decisions are made that will affect the participation of parentally placed children in Part B programs. Thus, decisions about services may not be made in advance or in the absence of timely and meaningful consultation. After timely and meaningful consultation has occurred 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. See 34 CFR §300.137(b).

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. See 34 CFR §300.134(e).

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**Question D-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 IDEA?

**Answer:** No. Decisions about which services and the amounts of services children with disabilities enrolled by their parents in private schools will receive are made during the consultation process and are based on the needs of the children designated to receive services. These children 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. See 34 CFR §300.137(a).

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**Question D-3:** May an LEA provide services to parentally placed private school children that are in addition to the services provided pursuant to the Federal equitable participation requirements and that are covered by the Federal proportionate share?

**Answer:** Yes. The IDEA does not prohibit a State or LEA from using additional State or local funds to provide special education or related services to parentally placed private school children with disabilities that are in addition to the services required in 34 CFR §§300.130 through 300.144, consistent with State law or local policy. Additionally, as long as the LEA meets all the other requirements of the IDEA, including providing FAPE to children with disabilities, it is permissible for the LEA to spend more than the minimum amount of Part B funds on providing services to children with disabilities placed by their parents in private schools.

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**Question D-4:** Must the proportionate amount of Part B funds be used only for direct services to parentally placed private school children with disabilities? Is it permissible to use funds for this population on other services, such as consultative services, materials, equipment, or training?

**Answer:** Under 34 CFR §300.133(a), each LEA must spend a proportionate amount of Part B funds on providing special education and related services (including direct services) to parentally placed private school children with disabilities. The regulations specify that the LEA makes the final decisions about the services to be provided to eligible parentally placed private school children with disabilities, based in part on input provided through the consultation process by appropriate private school representatives and representatives of parents of parentally placed private school children with disabilities. See 34 CFR §300.137(b)(2). These decisions cannot be made in advance of or in the absence of timely and meaningful consultation with private school representatives and with representatives of parents of parentally placed private school children with disabilities.

IDEA does not require an LEA to spend the proportionate share only for direct services. Rather, through the consultation process described in 34 CFR §300.134, a determination must be made about how the available amount of funds will be utilized so that the parentally placed private school children with disabilities designated to receive services can benefit from the services offered. Depending on the discussions during the consultation process, local circumstances, and the amount of funds available to expend on services for this population of children, an LEA could determine, after timely and meaningful consultation, that it will provide its population of parentally placed private school children with disabilities with indirect services. See 34 CFR §300.134(d)(1). These services could include consultative services, equipment, or materials for eligible parentally placed children with disabilities or training for private school teachers and other private school personnel. Under 34 CFR §300.138(c)(2), special education and related services provided to

parentally placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

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## E. Services Plans

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**Authority:** The requirements for services plans are found in 34 CFR §§300.132(b) and 300.138(b).

**Question E-1:** How often must a services plan be updated?

**Answer:** The IDEA and its implementing regulations do not specify how often a services plan must be updated. As provided in 34 CFR §300.138(b)(2)(ii), a services plan must, to the extent appropriate, be developed, reviewed, and revised in accordance with the individualized education program (IEP) requirements in 34 CFR §§300.321 through 300.324. The regulations in 34 CFR §300.324(b)(1) require that a child's IEP be reviewed periodically and not less than annually, to determine whether the annual goals for the child are being achieved, and to be revised as appropriate. As such, the Department suggests that a services plan be reviewed periodically, not less than annually, to determine whether the annual goals for the child are being achieved and to be revised as appropriate.

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**Question E-2:** Does the parent of a parentally placed private school child have the opportunity to participate in the development of a services plan?

**Answer:** Yes. As provided in 34 CFR §300.138(b)(2)(ii), a services plan must, to the extent appropriate, be developed, reviewed, and revised in accordance with the requirements in 34 CFR §§300.321 through 300.324. Therefore, to the extent appropriate, the meeting to develop a services plan should be conducted in accordance with 34 CFR §300.321. Under 34 CFR §300.321(a)(1), the parents of the child are required participants. Given the emphasis on parent involvement in the IDEA, the Department believes that parents should have the opportunity to participate in meetings to review and develop the services plan for their child.

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**Question E-3:** 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 FAPE and must receive the full range of services under Part B of the IDEA. These services are determined by the child's IEP team and are necessary to meet the child's individual needs and provide FAPE. The IEPs for these children generally will be more comprehensive than services plans developed for parentally

placed private school children with disabilities who are designated to receive services. This is because parentally placed children do not have an individual entitlement to any or all of the services that the children would receive if enrolled in a public school. Further, a services plan should reflect only the services offered to a parentally placed private school child with a disability designated to receive services. In addition, a services plan is required to meet the IEP content requirements described in section 614(d) of the IDEA, or, when appropriate, for children aged three through five, the Individualized Family Service Plan (IFSP) requirements described in section 636(d) of the IDEA, to the extent appropriate, and only in relation to the services that are to be provided.

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**Question E-4:** What is the process for developing a services plan for a parentally placed private school child with a disability?

**Answer:** The LEA must initiate and conduct meetings to develop, review, and revise a services plan for a parentally placed private school child with a disability designated to receive services. The LEA must ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA must use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls. See 34 CFR §300.137(c). The services plan must, to the extent appropriate, be developed, reviewed, and revised consistent with 34 CFR §§300.321 through 300.324. See 34 CFR §300.138(b)(2)(ii).

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## F. Location of Services and Transportation

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**Authority:** The requirements for location of services and transportation are found in 34 CFR §300.139.

**Question F-1:** Section 300.139(a) of the Part B regulations states that services to parentally placed private school children with disabilities may be provided on the premises of private, including religious, schools to the extent consistent with law. How is “to the extent consistent with law” determined?

**Answer:** The phrase “to the extent consistent with law” is in section 612(a)(10)(A)(i)(III) of the IDEA. The Department interprets this to mean that the provision of services on the premises of a private school must take place in a manner that would not violate the Establishment Clause of the First Amendment of the U.S. Constitution and would not be inconsistent with applicable State constitutions or laws. The Department generally believes that, unless there is a compelling rationale for these services to be provided off-site, LEAs should provide services on-site, at the child’s private school, so as not to unduly disrupt the child’s educational experience.

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**Question F-2:** How does an LEA determine the location where services will be provided to parentally placed private school children with disabilities?

**Answer:** The location of services is one of the subjects that must be discussed during the consultation process among LEA officials, private school representatives, and representatives of parents of parentally placed private school children with disabilities. See 34 CFR §300.134(d). Under 34 CFR §300.137(b), after the consultation process and giving due consideration to the views of the private school officials, the LEA makes the final decision. See 34 CFR §300.137(b).

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**Question F-3:** Must an LEA provide transportation in order for a child to benefit from or participate in the services provided under the private school provisions?

**Answer:** The regulations in 34 CFR §300.139(b) require that if necessary for the child to benefit from or participate in the services provided under the private school provisions, an LEA must provide a parentally placed private school child with a disability transportation from the child's school or the child's home to a site other than the private school; and from the service site to the private school, or to the child's home, depending on the timing

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of the services. The IDEA does not require LEAs to provide transportation from the child's home to the private school. The LEA may include the cost of the transportation in calculating whether it has spent the proportionate share of Federal Part B funds on providing services to parentally placed private school children with disabilities as required by 34 CFR §300.133.

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## G. Highly Qualified Teachers (HQTs) in Private Schools

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**Authority:** The requirements for highly qualified teachers and the applicability to private school teachers are found in 34 CFR §§300.18(h) and 300.138(a).

**Question G-1:** Do the HQT provisions in IDEA apply to private school teachers?

**Answer:** No. The HQT provisions do not apply to special education teachers hired by private elementary and secondary schools, including private school teachers hired or contracted by LEAs to provide equitable services to parentally placed private school children with disabilities under 34 CFR §300.138.

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**Question G-2:** If an LEA sends a special education teacher (employed by the LEA) to a private school to provide special education and related services to a child, must that teacher meet the HQT requirements in IDEA?

**Answer:** Yes. Any public elementary or secondary school teacher must meet the HQT requirements.

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**Question G-3:** May States exceed the IDEA's requirements and require teachers in private schools to hold certain credentials or certifications?

**Answer:** The regulations in 34 CFR §§300.18(h) and 300.138(a) make clear that the IDEA does not require that private school teachers meet the same highly qualified teacher requirements as teachers who are employed by public agencies. The IDEA is silent regarding additional credentials or certifications that a State may require under State law. Therefore, States may exceed the IDEA requirements and require teachers in private schools to hold certain credentials or certifications if consistent with State law. If a State establishes requirements that exceed those required by Part B of the IDEA or the Federal regulations, the State is required by 34 CFR §300.199(a)(2) to identify in writing to the LEAs located in the State and to the Secretary of the U.S. Department of Education (Secretary) that such rule, regulation, or policy is a State imposed requirement that is not required by Part B of the IDEA or the Federal regulations.

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## H. Expenditures

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**Authority:** The expenditure requirements are found in 34 CFR §300.133.

**Question H-1:** Is the proportionate share that an LEA must expend to provide equitable services to children with disabilities placed by their parents in private schools different from the share an LEA would have been required to spend prior to the 2004 IDEA reauthorization?

**Answer:** Yes. The revisions to the IDEA in 2004 made a significant change in the manner in which the proportionate share is calculated. Under the 2004 amendments to the IDEA, the proportionate share calculation must be based on the total number of children with disabilities who are enrolled in private schools located in the LEA, whether or not the children or their parents reside in the LEA.

More specifically, each LEA must spend the following amounts on providing special education and related services (including direct services) to parentally placed private school children with disabilities:

- (1) For children aged three through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the IDEA as the number of private school children with disabilities aged three through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA is to the total number of children with disabilities in its jurisdiction aged three through 21.
- (2) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the IDEA as the number of parentally placed private school children with disabilities aged three through five who are enrolled by their parents in private, including religious, elementary schools located in the school district served by the LEA is to the total number of children with disabilities in its jurisdiction aged three through five.

Appendix B of the regulations provides an example of how to make this calculation.

**Question H-2:** Which children must an LEA count in order to calculate the proportionate share?

**Answer:** Children who have been evaluated and found eligible for special education and related services, not just those children who receive services through an IEP or services plan, should be included in the count to calculate the proportionate share. As discussed in 34 CFR §300.133(a), each LEA must determine the total number of private school children with disabilities who are enrolled by their parents in private elementary schools and secondary schools located in the LEA and the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA.

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**Question H-3:** May an LEA expend more than the proportionate share of Part B funds on children with disabilities placed by their parents in private schools?

**Answer:** Yes. As referenced in Question D-3, nothing in the IDEA prohibits an LEA from expending more than the proportionate share. Each LEA is required to spend a minimum amount of its subgrant under Part B of the IDEA for children with disabilities placed by their parents in private schools. As long as the LEA meets all the other requirements of the IDEA, including providing FAPE to children with disabilities, it is permissible for an LEA to spend more than the minimum amount of Part B funds on providing services to children with disabilities placed by their parents in private schools. In addition, as provided in 34 CFR §300.133(d), State and local funds may be used to supplement, but not supplant, the LEA's proportionate share of Federal funds required to be expended on children with disabilities placed by their parents in private schools.

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**Question H-4:** If an LEA does not expend the entire proportionate share of Part B funds on children with disabilities placed by their parents in a private school that closes, what must the LEA do with those unexpended funds?

**Answer:** Under 34 CFR §300.133(a), each LEA is required to spend a minimum amount of its subgrant under Part B of the IDEA on children with disabilities placed by their parents in private elementary and secondary schools. As provided in 34 CFR §300.133(a)(3), if an LEA has not expended all of the proportionate share of its Part B subgrant by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services to children with disabilities placed by their parents in private schools during a carry-over period of one additional year. A reduction in the number of

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children, for example, when a school closes after the start of the school year, does not excuse the LEA from spending its proportionate share to provide equitable services to children with disabilities placed by their parents in private schools.

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**Question H-5:** If an LEA does not expend the entire proportionate share of Part B funds on children with disabilities placed by their parents in private schools by the end of the carry-over period, may the LEA return the unexpended funds to the SEA to be spent by the SEA or reallocated to another LEA?

**Answer:** No. If, after the carry-over period, the LEA is unable to expend the entire proportionate share and *assuming the LEA is in compliance with the child find, consultation, and other requirements related to parentally placed private school children with disabilities in 34 CFR §§300.129 through 300.144*, the LEA may use the unexpended funds - at the end of the period during which the funds may be spent on parentally placed private school children - to pay for other allowable Part B expenditures for that same LEA. This situation should be the exception. We emphasize that it is the clear intent of the Act that LEAs spend these funds on providing special education and related services to parentally placed private school children with disabilities, as provided in 34 CFR §§300.129 through 300.144. Therefore, if the LEA is not in compliance with these requirements and has not expended the funds on parentally placed private school children, the LEA must return the funds to the U.S. Department of Education.

The SEA is responsible for ensuring that LEAs are in compliance with these requirements. See 34 CFR §§300.149(a) and 300.600(b)(2). If an LEA has not expended the proportionate share by the end of the carry-over period, the SEA can monitor the LEA to ensure that it is meeting these requirements, including the requirement in 34 CFR §300.135 that the LEA obtain written affirmation signed by representatives of participating private schools that timely and meaningful consultation has occurred. In any event, there is no authority that permits the LEA to return the funds to the SEA to be spent by the SEA or reallocated to another LEA.

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**Question H-6:** How can the public find out the amount an LEA must expend to meet its proportionate share of Part B funds?

**Answer:** This information should be readily available from the LEA or SEA. As required by 34 CFR §300.134(b), the consultation process must include a determination of the proportionate share of Federal funds available to serve parentally placed private school children with disabilities, including how the proportionate share of funds is calculated.

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**Question H-7:** Will the Federal and State allocation of Part B funds have to be adjusted to include parentally placed private school children with disabilities receiving equitable services?

**Answer:** Under the Grants to States and Preschool Grants for Children with Disabilities programs, Federal Part B funds are allocated to States, and from States to LEAs, using a statutory formula that takes into consideration the amount of program funds received in a prior year (the base year), along with the most recent population and poverty data (see 34 CFR §§300.703, 300.705, 300.807, and 300.816). Each LEA calculates the proportionate share it must spend on parentally placed private school children with disabilities based on the LEA's subgrant. Because Part B funds are allocated to States and LEAs using a statutory formula that is not based on a child count, the amount of Part B funds allocated to States and LEAs cannot be adjusted based on the number of private school students with disabilities receiving equitable services. Adjustments in State funding could be made depending on each State's laws and funding mechanisms.

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**Question H-8:** How are the "Maintenance of Effort" requirements affected when equitable services are no longer provided with State and local funds to children with disabilities placed by their parents in private schools? How are the "Maintenance of Effort" requirements affected for an LEA that only used State and local funds in previous years to provide equitable participation to children with disabilities placed by their parents in a private school?

**Answer:** In accordance with the regulations in 34 CFR §300.133(d), State and local funds may supplement, but not supplant, the proportionate share of Federal funds required to be expended for children with disabilities placed by their parents in private schools. This is a new requirement under the IDEA and its implementing regulations. Prior to the reauthorization of the IDEA in 2004, if an LEA spent more than the Federal proportionate share of funds using State and local funds, the LEA was not required to spend any Federal Part B funds on parentally placed private school children. This is no longer permissible.

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An LEA that previously used only State and local funds to provide equitable services to children with disabilities placed by their parents in a private school and now uses Federal Part B funds to provide equitable services must meet the maintenance of effort requirements in 34 CFR §300.203. The exceptions to the maintenance of effort requirements in 34 CFR §300.204 do not apply to funds used for equitable participation of parentally placed private school children with disabilities. Therefore, the total or per capita amount of local or State and local funds expended for the education of children with disabilities, including the amount of local or State and local funds previously expended for equitable services to children with disabilities placed by their parents in private schools, would have to be maintained, unless adjustments are permitted under 34 CFR §300.205.

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**Question H-9:** May an LEA include administrative costs to meet the requirement to spend a proportionate share of Part B funds on children with disabilities placed by their parents in private schools?

**Answer:** No. As stated in 34 CFR §300.133(a), each LEA is required to spend a proportionate share of Federal Part B funds on providing special education and related services to children with disabilities who are enrolled by their parents in private elementary schools and secondary schools in order for the LEA to meet its responsibility for providing equitable services. We interpret the reference to “special education and related services” to mean that administrative costs could not be included in the amount each LEA must spend to meet this requirement. Thus, an LEA may not expend the proportionate share of Federal Part B funds on administrative costs.

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**Question H-10:** May an LEA use Part B funds that are required to be expended on equitable services to make payments directly to a private school?

**Answer:** No. Part B funds for equitable services may not be paid directly to a private school. Under 34 CFR §300.144(a), a public agency must control and administer the funds used to provide special education and related services to parentally placed private school children with disabilities. Under 34 CFR §300.141, an LEA may not use Part B funds to finance the existing level of instruction in a private school, and such funds may not be used for meeting the needs of a private school or the general needs of the students enrolled in the private school. The LEA must use the proportionate share of Federal Part B funds to meet the special education and related services needs of parentally placed private school children with disabilities.

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**Question H-11:** Who is required to monitor an LEA's expenditures of Part B funds to meet the requirements for equitable services?

**Answer:** As required by 34 CFR §§300.149(a) and 300.600(b)(2), the SEA is responsible for ensuring that LEAs meet all program requirements under Part B of the IDEA. This includes the requirement that an LEA expend the proportionate share of Part B funds on providing special education and related services to parentally placed private school children with disabilities in accordance with 34 CFR §§300.129 through 300.144.

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**Question H-12:** Must children whose parents decline special education and related services be included in a school district's proportionate share calculation?

**Answer:** Yes. As specified in 34 CFR §300.131(a), each LEA must 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 served by the LEA. The number of parentally placed private school children with disabilities is used to determine the amount that the LEA must spend on providing special education and related services to parentally placed private school children with disabilities in the next subsequent fiscal year. Under 34 CFR §300.300(d)(4), if a parent of a home-schooled or parentally placed private school child declines to consent to the initial evaluation or the reevaluation, the public agency may not use the consent override procedures to seek to conduct the evaluation and, thus, may not include the child in the annual count of the number of parentally placed private school children with disabilities.

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If the LEA evaluates a parentally placed private school child and determines the child eligible under the IDEA, but the parent declines the offer of special education and related services, the LEA must include this child in the annual count of the number of parentally placed private school children with disabilities. Thus, an LEA must include in its proportionate share calculation eligible children with disabilities, including those children whose parents decline all publicly funded services and place them in a private school at their own expense, provided those children are enrolled by their parents in a private, including a religious, elementary school or secondary school located in the school district served by the LEA.

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## I. Property, Equipment, and Supplies

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**Authority:** The requirements for property, equipment, and supplies are found in 34 CFR §300.144.

**Question I-1:** May a public agency place equipment and supplies for equitable services in a private school?

**Answer:** Yes. The public agency may place equipment and supplies in a private school, but only for the period of time needed to meet the equitable participation requirements for the Part B 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. See 34 CFR §300.144(b), (c), and (d).

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**Question I-2:** 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. See 34 CFR §300.144(e).

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## J. Out-of-State Children With Disabilities

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**Authority:** The requirements for out-of-State children are found in 34 CFR §300.131(f).

**Question J-1:** Must the LEA where the private elementary and secondary schools are located conduct child find activities for parentally placed private school children who reside outside the State?

**Answer:** The child find provision in 34 CFR §300.131(f) makes clear that the LEA where the private elementary 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 enrolled in private elementary and secondary schools located in the LEA, regardless of where those children reside. This includes all children from other States who may be attending private elementary schools and secondary schools located in the LEA.

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**Question J-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 school is 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 attending private elementary and secondary schools located in that LEA. Under 34 CFR §300.131(f), 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.

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**Question J-3:** May an LEA require another LEA to pay for the services of a parentally placed private school child with a disability from another State?

**Answer:** No. Section 300.133(a) of the regulations clarifies that the LEA where a private school is located is responsible for spending a proportionate amount of its subgrant under Part B of the IDEA on special education and related services for children enrolled by their parents in private elementary and secondary schools located in the LEA. There is no exception for out-of-State children with disabilities attending a private school located in the LEA. Therefore, out-of-State children with disabilities 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. Another LEA may not be charged for child find and equitable services even if the child with a disability resides in another State.

Nothing in the IDEA precludes an LEA from contracting with a third party to fulfill its obligations to ensure equitable participation. This includes contracting with a student's LEA of residence as a third party provider.

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**Question J-4:** When making a determination regarding the services that an LEA will provide to children with disabilities placed by their parents in private schools, could an LEA decide to only provide services to students from their LEA or their State?

**Answer:** No. Although LEAs have discretion to determine how the proportionate share of Federal Part B funds will be expended so long as the consultation requirements in 34 CFR §300.134 are followed for all parentally placed private school children, LEAs cannot determine, prior to or in absence of the timely and meaningful consultation process, that the proportionate share of Federal Part B funds for equitable services can only be expended to meet the needs of children who are residents of that LEA or State.

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**K. Home-Schooled Children with Disabilities**

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**Authority:** The requirements for children with disabilities enrolled by their parents in private schools are found in 34 CFR §§300.130 through 300.144.

**Question K-1:** Which LEA is responsible for conducting child find for children who are homeschooled?

**Answer:** Generally, the LEA where the child resides is responsible for conducting child find activities, including initial evaluations and reevaluations, for children who are homeschooled.

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**Question K-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 under State law. If the State recognizes home-schools as private elementary schools and secondary schools, children with disabilities in those home-schools must be treated in the same way as other parentally placed private school children with disabilities.

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**Question K-3:** If a home-schooled child enrolled in the public school for the purpose of taking some academic courses was identified as having a disability, would the student be treated as a parentally placed private school child or as a public school child?

**Answer:** Whether a home-schooled child with disabilities enrolled in the public school for the purpose of taking some academic courses would be treated as a parentally placed private school child entitled to be considered for equitable services or as a public school child entitled to receive FAPE is determined under State law. Even if such a child were not considered a public school student, the public school would have to meet the requirements of section 504 of the Rehabilitation Act of 1973, as amended, and title II of the Americans with Disabilities Act, as amended, by providing the child an equal opportunity to participate in or benefit from the academic courses provided at the public school. In addition, the responsible public agency, generally the LEA of residence, would have to make FAPE available to the child consistent with Part B requirements if the parent seeks to enroll the child with a disability in the public school full-time.

**L. Due Process**

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**Authority:** The requirements for how due process and State complaints apply to children parentally placed in private schools are found in 34 CFR §300.140.

**Question L-1:** Under what circumstances may a parent file a due process complaint under the private school provisions?

**Answer:** As provided in 34 CFR §300.140(b), a parent of a child enrolled by that parent in a private school has the right to file a due process complaint regarding the child find requirements in 34 CFR §300.131, including the requirements in 34 CFR §§300.300 through 300.311. Such a complaint must be filed with the LEA in which the private school is located, and a copy must be forwarded to the SEA by the LEA. The due process provisions in section 615 of the Act and 34 CFR §§300.504 through 300.519 of the regulations do not apply to issues regarding the provision of services to any particular parentally placed private school child with disabilities whom an LEA has agreed to serve because there is no individual right to services for such children under the IDEA.

Disputes that arise about equitable services are, however, properly subject to the State complaint procedures in 34 CFR §§300.151 through 300.153. As provided in 34 CFR §300.140(c), a parent may file a signed written complaint in accordance with the State complaint procedures alleging that an SEA or LEA has failed to meet the private school requirements, such as failure to properly conduct the consultation process.

## M. State Complaints

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**Authority:** The requirements for State complaints are found in 34 CFR §§300.136 and 300.140.

**Question M-1:** Do private school officials have the right to file a complaint under the State complaint provisions in 34 CFR §§300.136 and 300.140?

**Answer:** Yes. Under 34 CFR §300.136, 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. Under this provision a complaint must provide the basis of the private school official's belief that the LEA did not comply with the consultation requirements. The LEA must forward appropriate documentation related to the complaint to the SEA. If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary 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 related to the complaint to the Secretary.

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**Question M-2:** If the parent of a parentally placed private school child with a disability files a State complaint alleging that the services identified in the child's services plan were not provided, is it permissible for the SEA to resolve the complaint by requiring the LEA to provide compensatory services? How would the provision of these services affect the calculation of the expenditures to meet the required proportionate share?

**Answer:** Under 34 CFR §300.140(c), any complaint alleging that an SEA or LEA has failed to meet the requirements in 34 CFR §§300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the State complaint procedures described in 34 CFR §§300.151 through 300.153. If in resolving such a complaint, the SEA determines that compensatory services are the appropriate remedy, such services may be ordered by the SEA if sufficient funds are available from the proportionate share set aside in the LEA to provide equitable services under 34 CFR §§300.129 through 300.144.

If the proportionate share has been expended prior to the awarding of compensatory services to resolve a complaint, the SEA cannot require an LEA to spend additional Part B funds, beyond the minimum amount required under 34 CFR §300.133(a), to pay for compensatory services for a parentally placed private school child with a disability. However, under

34 CFR §300.133(d), State and local funds may supplement, but not supplant, the proportionate amount of Federal Part B funds required to be expended for parentally placed private school children with disabilities. The use of State and local funds, on top of the proportionate share of Part B funds, is permitted but not mandatory. Therefore, if the proportionate share of Part B funds has been expended, pursuant to the authority in 34 CFR §300.133(d), a State may, but is not required to, order an LEA to use State and local funds to pay for compensatory services for a parentally placed private school child with disabilities. It is important that as part of the consultation process, the LEA, private school officials, and representatives of parents of parentally placed private school children with disabilities consider the amount of the proportionate share of Part B funds in determining what services will be provided in order to ensure an LEA has sufficient Part B funds to implement the services plan for each parentally placed child with a disability who has been designated to receive services.

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## N. Preschool Children

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**Authority:** The requirements for children with disabilities enrolled by their parents in private schools are found in 34 CFR §§300.130 through 300.144.

**Question N -1:** What obligation, if any, do districts have to serve three- through five-year-old children who are parentally placed in private preschools?

**Answer:** An LEA's obligation to serve children aged three through five under the equitable services provisions depends on whether a child is enrolled in a private school or facility that meets the definition of "elementary school" in the IDEA and the final regulations. "Elementary school" is defined in 34 CFR §300.13 as a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law. Accordingly, three- through five-year-old children with disabilities who are enrolled by their parents in a private school or facility that meets the State's definition of "elementary school" would be considered parentally placed and the equitable participation provisions would apply.

A child aged three through five enrolled by his or her parents in a private school or facility that does not meet the State's definition of "elementary school" would not be eligible to be considered for equitable services. However, the State's obligation to make FAPE available to such a child remains. Section 612(a)(1) of the IDEA requires that States make FAPE available to eligible children with disabilities aged three through 21 in the State's mandated age range (34 CFR §300.101). Because many LEAs do not offer public preschool programs, particularly for three- and four-year-olds, LEAs often make FAPE available to eligible preschool children with disabilities in private schools or facilities in accordance with 34 CFR §§300.145 through 300.147. In these circumstances, there is no requirement that the private school or facility be an "elementary school" under State law.

In some instances, an LEA may make FAPE available in the private preschool program that the parent has selected. If there is a public preschool program available, the LEA of residence may choose to make FAPE available to a preschool child in that program. If the group of persons making the placement decision, as specified in 34 CFR §300.116(a)(1), places the child in a public or private preschool program and the parents decline the public agency's offer of FAPE because they want their child to remain in the private preschool program they have selected, the public agency is not required to provide FAPE to that child. The parent may challenge the public agency's determination of what

constitutes FAPE for their child using the State complaint and due process procedures available under IDEA.

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## **O. Children in For-Profit Private Schools**

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**Authority:** The requirements for children with disabilities enrolled by their parents in private schools are found in 34 CFR §§ 300.130 through 300.144.

**Question O-1:** Are children enrolled in a for-profit private school counted for the purpose of determining the proportionate share and eligible to receive equitable services?

No. The regulations in 34 CFR §300.130 define parentally placed private school children with disabilities as children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in 34 CFR §300.13 or secondary school in 34 CFR §300.36. The definitions of elementary school in 34 CFR §300.13 and secondary school in 34 CFR §300.36 specify that the school must be nonprofit. Therefore, children attending for-profit private schools would not be included in the proportionate share calculation or be eligible for equitable services.

However, under 34 CFR §300.111, the State must ensure that all children with disabilities, including children with disabilities attending private schools, who are in need of special education and related services, are identified, located, and evaluated. This includes children with disabilities attending for-profit schools. A State determines which public agency is responsible for conducting child find under 34 CFR §300.111 for children suspected of having a disability attending for-profit private schools. Generally, this agency is the LEA in which the child resides.