

PRIVATE SCHOOLS,
PROPORTIONATE
SHARE, AND
EQUITABLE SERVICES:
Questions and some
answers.

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LENORE KNUDTSON
Thank you for this opportunity.

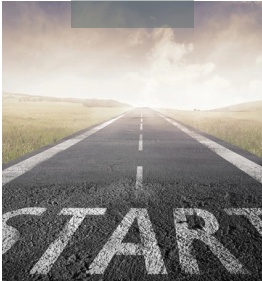


Be a life-long learner.
It is the responsibility of every education professional to think deeply, sharpen the skill set, learn new things, and improve outcomes on behalf of students.

- ✓ Lean in!
- ✓ Challenge yourself!

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THE STARTING POINT

Districts have an obligation to provide parentally placed private school students with disabilities the opportunity for **equitable participation** in the services that the district has determined, **after consultation**, to make available to its **population** of parentally placed private school children with disabilities.

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OUR TOPICS

<p>WHO?</p> <p>The population of parentally placed private school students.</p>	<p>WHAT PLANNING?</p> <p>Planning requires timely and meaningful consultation.</p>	<p>WHAT FUNDS?</p> <p>Expend a portion of funds on eligible Part B students.</p>	<p>WHAT SERVICES?</p> <p>Districts must provide equitable services according to a plan.</p>	<p>WHAT SYSTEM?</p> <p>Districts must meet these requirements annually.</p>
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THE WHO

- Our conversation is limited to parentally placed private school children, meaning that parents have opted as a matter of choice for their students to attend private school.
- We are NOT talking about parents who seek a private placement because of a dispute about appropriate services of FAPE.
- We are NOT talking about children placed in private school by a public school as a way to provide FAPE.

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THE WHO

- **These children have no individual entitlement to receive FAPE,** meaning some or all of the special education and related services they would receive if enrolled in a public school.

34 C.F.R. §300.137(a); and SDR 24:05:32:01.04.

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THE WHO

- The obligation of the district to spend a proportionate amount of funds is based on the total number of children with disabilities who are enrolled in private schools located in the district, whether or not the children and their parents reside in the district.

Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, 80 IDELR 197 (OSERS 2022); and 71 Federal Register 46590.

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SAME ANSWER

Whether the parents reside in the district where the private school is located?

Whether the parents reside in South Dakota?

Whether the parents reside in the U.S.A.?

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WHAT PLANNING?

Planning requires timely and meaningful consultation.

WHAT IS TIMELY?
WHAT IS MEANINGFUL?

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CONSULTATION REQUIREMENTS

- **How** all eligible students in private schools are identified, and how parents, teachers, and school officials are informed of the process.
- **How** the proportionate share of funds will be calculated.
- **How** the consultation will take place, including ensuring that it continues throughout the school year.

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CONSULTATION REQUIREMENTS

- **How** services will be apportioned if needed.
 - **How** the district addresses disagreement with the private school.
- 34 C.F.R. §300.134; Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, 80 IDELR 197 (OSERS 2022); SDR 24:0532:01.05.*

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CONSULTATION

- Generally, consultation occurs at meetings convened by an LEA with private school representatives and representatives of parents of parentally-placed private school children with disabilities who have agreed to engage in the consultation process.

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MEANINGFUL

- Make it meaningful!
- Effective consultation will provide all private school and parent representatives with an opportunity to express their views and to have those views considered by the district **before** the district makes decisions regarding services provided to parentally placed private school children with disabilities.

Letter to Rothman, 30 IDELR 269 (OSEP 1998); and Questions and Answers on Serving Children With Disabilities Placed by Their Parents in Private Schs., 80 IDELR 197 (OSERS 2022).

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TIMELY

- For consultation to be meaningful, it must be timely!
- While LEAs are best able to determine when it should occur, OSEP opined that consultation should take place, at a minimum, to review the child find process, discuss the child count, plan the services being offered, and establish a consultation timeline **prior to the start of each school year.**

Letter to Radziwill, 70 IDELR 234 (OSEP 2017).

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UNILATERAL OFFER

A unilateral offer of services by an LEA with no opportunity for discussion **is not adequate consultation.**

Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, 80 IDELR 197 (OSERS 2022).

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PARTICIPANTS

- Required participants:
 - The district,
 - Representatives of the private school, and
 - Parents of private school children.

34 C.F.R. §300.134.

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AFFIRMATION

- When timely and meaningful consultation has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools. *34 CFR 300.135(a).*
- The affirmation should include a statement that the consultation has occurred and continued throughout the school year.

Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, 80 IDELR 197 (OSERS 2022); and SDR 24:05:3201.06.

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AFFIRMATION

- You have a form for this!
- IDEA Part B Affirmation of Private School Consultation: It is a great form and includes optional Private School Consultation Questions for your convenience.
- Use the signed affirmation page! Attendance sheets are not sufficient!

Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, 80 IDELR 197 (OSERS 2022).

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AFFIRMATION

- My only suggestion: Document that the consultation is ongoing throughout the year, not just annually.

Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, 80 IDELR 197 (OSERS 2022).

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FINAL DECISION

- After consultation, it is the LEA that must make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities. *34 C.F.R. §300.137 (b)(2).*
- Private school officials have the right to submit a complaint to the state alleging the district failed to follow the required process. *34 C.F.R. §300.136.*

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WHAT FUNDS?

Expend a portion of funds on eligible Part B students.

WHAT PORTION OF FUNDS? HOW IS IT CALCULATED?

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FUNDING

- The IDEA requires each local agency to fund special education and related services, including transportation, for parentally placed private school children with disabilities.

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FUNDING

- The district must fund these services to the extent consistent with the number and location of children with disabilities served by the district.
34 C.F.R. §300.132(a).
- However, this funding is limited to a **proportionate amount** of the federal funds made available to the district for special education.
34 C.F.R. §300.133(a).

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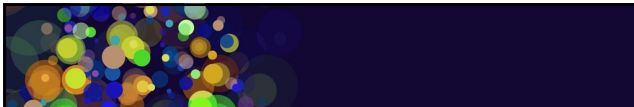
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FIRST, CHILD FIND

- "Districts 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 district's jurisdiction].**"
34 C.F.R. §300.133(b); SDR 24:05:32:01.01.

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FIRST, CHILD FIND

Start with the correct numbers. Find out how many parentally-placed children with disabilities attend private schools within the district.

ALL OF THEM!

Don't just count the number of private school students that receive services.

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EXAMPLE

- Student resides in the **Todd County** school district.
- Student attends a private school located in the **Bennett County** school district.
- It is the responsibility of the **Bennett County school district** to count the Student in their calculation of the amount that must be set aside and expended on parentally placed private school student.

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THE CHILD COUNT

- The child count of the current year is used to determine the proportionate amount for the subsequent fiscal year.
- The district must complete an accurate child count between October 1 and December 1 of the current year. *34 C.F.R. §300.133(c).*

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THE FORMULA

- A. Total number of eligible public school children with disabilities in the area.
- B. Total number of eligible parentally placed private school children with disabilities in the area.
- C. Total federal funds to school district
- D. Formula percentage (B/(A+B))
- E. Proportionate Share (C*D)

Memorandum to Chief State Sch. Officers, 34 IDELR 263 (OSEP 2000); and 71 Federal Register 46814.

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EXAMPLE

Step 1

LEA's Flowthrough Grant Allocation	÷	Total Number of Students With Disabilities ages 3 to 21	=	Students with Disabilities Per Capita Amount
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Once the LEA has determined the student per capita amount, the LEA's equitable services set aside for the flow-through can be determined.

Step 2

Student with Disabilities Per Capita Amount	X	Total number of parentally placed private school students ages 3-21 eligible for special education attending private schools in the LEA's jurisdiction	=	Amount of the LEA Flowthrough Grant allocation that must be expended for parentally placed private school students with disabilities
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619 PRESCHOOL FUNDS EXAMPLE

Description	Counts/Calculation
Number of eligible children (3-5) with disabilities in public schools within the ISD (Students with IEPs)	95
Number of parentally placed children (3-5) determined eligible in private elementary schools within the ISD	5
Total number of eligible children (3-5)	100
IDEA Preschool (Section 619) funds allocated to the ISD	\$50,000
Average allocation per eligible child (3-5)	\$500 (\$50,000/100)
Number of parentally placed children (3-5) determined eligible in private elementary schools within the ISD	5
Total Preschool Proportionate Share Requirement	\$2,500 (\$500 x 5)

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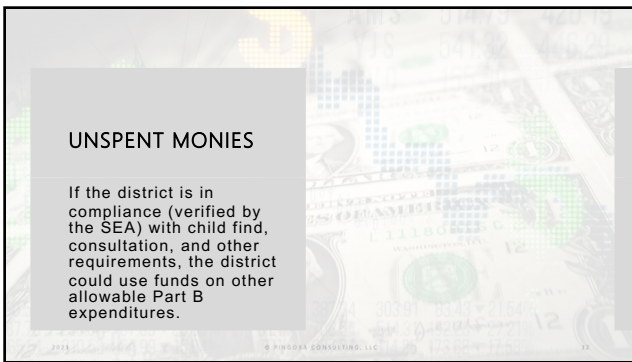
UNSPENT MONIES

What happens if the funds are not spent by the end of the second year (carry over year)?

The answer depends on WHY the funds weren't spent.

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UNSPENT MONIES

If the district is in compliance (verified by the SEA) with child find, consultation, and other requirements, the district could use funds on other allowable Part B expenditures.

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UNSPENT MONIES

- If the district is NOT in compliance with all requirements, the district must return the funds to the Department of Education.
- NO AUTHORITY to return the funds to the SEA to be spent by the SEA or reallocated to another district.

Letter to Andrejack, 56 IDELR 20 (OSEP 2010).

NO!

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WHAT SERVICES?

Districts must provide equitable services according to a plan.

**WHAT IS EQUITABLE?
WHAT PLAN?**

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EQUITABLE SERVICE

Equitable services are special education and related services, including direct services, provided to parentally-placed private school children with disabilities.

34 C.F.R. §§300.132; 300.137, and 300.138.

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WHAT SERVICES?

- It depends.
- Decisions about which services and the amount 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 aggregate needs of private school students within the district.

Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, 80 IDELR 197 (OSERS 2022).

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WHAT SERVICES?

- IDEA does not require an LEA to spend the proportionate share **only** for direct services.
- The district, through the consultation process, decides.

Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, 80 IDELR 197 (OSERS 2022).

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WHAT PLAN?

- Districts providing equitable services to parentally placed students with disabilities must do so in accordance with a services plan.
- The services plan must describe the special education and related services that will be provided to a parentally placed private school child with disabilities designated to receive services. *34 C.F.R. §300.138(b).*

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SERVICES PLAN

A "services plan" is "a **written statement** that describes the **special education and related services** the LEA will provide to a parentally-placed child with a disability enrolled in a private school **who has been designated to receive services**, including the location of the services and any transportation necessary, and is developed and implemented in accordance with 34 C.F.R. §300.137 through 34 C.F.R. §300.139."

34 C.F.R. §300.137.

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ISP vs. IEP

- An ISP is NOT the same as an IEP. Don't use the terms or the documents interchangeably.
- A parentally placed private school student has NO individual right to receive FAPE at the private school.
- IEPs are the cornerstone for providing FAPE.

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ISP vs. IEP

Using an IEP in lieu of a services plan for parentally placed private school children may not be appropriate in light of the fact that an IEP developed pursuant to the IDEA will generally include much more than just those services that a parentally placed private school child will receive, if designated to receive services.

71 Federal Register 46596.

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USE IEP PROCEDURES

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THIS IS NOT FAPE WE ARE TALKING ABOUT

Children with disabilities placed by their parents in private schools do not have the right to all of the protections under IDEA.

Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, 80 IDELR 197 (OSERS 2022).

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TO THE EXTENT APPROPRIATE

- The services plan must, **to the extent appropriate**, meet the IEP content, development, review, and revision requirements in IDEA for IEPs, including 34 C.F.R. §§300.320 through 300.324.

34 C.F.R. §300.138(b); and 71 Federal Register 46596.

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DON'T CONFUSE FAPE!

- Child find pursuant to 34 C.F.R. §300.111 applies!
- The evaluation and reevaluation requirements of 34 C.F.R. §§300.301 through 300.305 apply!

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DON'T CONFUSE FAPE!

- However, if a parent does not respond or if they do not provide consent, the district is prohibited from using the consent override procedures. 34 C.F.R. §300.300(d)(4).
- The safeguards attached to these provisions apply, including IEEs pursuant to 34 C.F.R. §300.502!

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DON'T CONFUSE FAPE!

- Not every part of 34 C.F.R. §300.320 applies to parentally placed private school children.
- It is a good idea to meet the requirements of 34 C.F.R. §300.321 when convening meetings for ISP development, review, or revision.
- 34 C.F.R. §300.322 is unlikely to apply to parentally placed private school children.

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DON'T CONFUSE FAPE!

- Many of the components of 34 C.F.R. §300.323 will be appropriate for parentally placed private school children.
- Some of the components of 34 C.F.R. §300.324 will be appropriate for parentally placed private school children depending on the equitable services plan in each district.

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DON'T CONFUSE FAPE!

- Prior written notice in 34 C.F.R. §300.503 will apply with respect to identification or evaluation, but would be unlikely to apply to placement of the child AND would NOT apply to proposals or refusals regarding the provision of FAPE.

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REVIEW & REVISE

- Generally, the ISP should be reviewed periodically but not less than annually. Why?
- Because the procedures in the IDEA for IEPs must be followed to the extent appropriate.

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WHO PROVIDES EQUITABLE SERVICES?

- 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. 34 C.F.R. §300.138(c).

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WHO PROVIDES EQUITABLE SERVICES?

- An LEA may use IDEA 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. 34 C.F.R. §300.142(b).

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WHAT SYSTEM?

Districts must meet these requirements annually.

HAVE A SYSTEM. USE THE SYSTEM.

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HAVE A SYSTEM

- Meet all of these requirements in a systematic and ongoing manner.
- Consultation must be an ongoing process, not solely an annual meeting. 34 C.F.R. §300.134(c).
- Meaningful consultation must be timely and ongoing throughout the school year. *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools*, 80 IDELR 197 (OSERS 2022).

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THANK YOU

Questions?



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