

Frequently Asked Questions – Parentally-placed Private School Children with Disabilities

1. Does the private school Services Plan Committee or the Admission, Review, and Dismissal (ARD) Committee determine eligibility for special services?

Local educational agencies (LEAs) where private schools are located have responsibility for child find activities, including evaluation. Texas Administrative Code (TAC) §89.1096(b) requires that an ARD committee meet to consider a free, appropriate public education (FAPE) if a private school student is referred for special education services. Federal regulations provide clarification regarding this subject. OSEP Q and A on private schools indicates flexibility, stating “If the parents make clear their intention to keep their child enrolled in the private elementary school or secondary school, the LEA of residence need not develop an IEP for the child.”

2. Is the district where the private school is located responsible for providing an independent educational evaluation (IEE), if requested?

LEAs where a private school is located have responsibility for child find activities including evaluation. This may include a request for an Independent Educational Evaluation (IEE).

3. Can an LEA require a private school to follow district policies and procedures regarding pre-referral activities, such as the use of Student Assistance Teams?

LEAs have no authority over private schools. LEAs should be in timely and meaningful consultation throughout the school year with private school officials regarding the provision of special services to students with disabilities.

4. What is the process for districts to use when the district does not receive written affirmation from representatives of participating private schools?

LEAs should develop procedures regarding signed written affirmation of private school consultation that work for their situation (small vs. large LEA; rural vs. urban LEA; etc.). LEAs should collect on file any written affirmations. Attendance sign-in sheets are not sufficient documentation for this affirmation. LEAs unable to obtain a written affirmation should submit to TEA, a description of the attempts the LEA made to obtain the written affirmation as well as any other information that shows that meaningful consultation took place. The description should be attached as a document to the eGrants Special Education Consolidated Grant Application.

5. Are there confidentiality issues that would prohibit a district providing services to a private school student from communicating with the district of residence?

LEAs must obtain consent from the parents of private school students before communicating with other entities, including the district of residence.

6. If the parents of a private school student contact the district of residence for referral and evaluation, should the district of residence do anything other than refer the parent to the district where the private school is located?

LEAs are advised to work in collaboration with parents of private school students and the district where the private school is located, as these students often return to the district of residence.

7. Can a private school student's district of residence require the student's parents to allow the district to conduct its own evaluation of a private school student?

No. Parents and LEAs may agree that a private school student's district of residence will conduct an evaluation-however, the practice of "dueling evaluations" conducted by both the district of residence and the LEA where the private school is located is generally counterproductive and should be discouraged.

8. What activities should a public school engage in when involved in timely and meaningful consultation with a private school?

When a public school is engaged in a timely and meaningful consultation throughout the school year with a private school the questions of how, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms; how such services will be apportioned if funds are insufficient to serve all children; and how and when those decisions will be made. When the timely and meaningful consultation has occurred throughout the school year the public school must obtain a written affirmation signed by the representatives of the participating private school. Attendance sign-in sheets are not sufficient documentation for this affirmation.

9. When may a private school official submit a complaint?

A private school official has the right to submit a complaint to TEA if the private school official believes the LEA did not engage in consultation that was meaningful and timely throughout the school year or did not give due consideration to the views of the private school official. If the private school official wishes to submit a complaint, the official must provide to TEA, Special Education Division, 1701 N Congress Ave., Austin, Texas 78701, the basis of the noncompliance by the LEA. The LEA shall forward the appropriate documentation to TEA via email or the above address, for a decision regarding compliance.

10. What are the criteria for determining if a home school is a private school?

For a home school to be considered a private school under IDEA, the home school must provide elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and conduct formal review and documentation of student progress. However, since the State of Texas and TEA have long recognized home schools as private schools, it is not required or necessary for school personnel to question a home school parent who refer their child for special education services or proportional services beyond what is necessary to conduct Child Find, an initial evaluation/reevaluation for eligibility determination, or IEP/Services Plan development.

11. What should a school district consider when determining whether an entity is a private school?

In determining whether a school/entity is a private school, school districts must determine if the private school: 1) is a non-profit entity; 2) provides elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and; 3) conducts formal reviews and documentation of student progress.

12. What criteria should a school district consider when determining whether a pre-school facility is a private school?

In determining whether a pre-school facility is a private school, school districts must determine if the facility: 1) is a non-profit entity; 2) provides elementary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and; 3) conducts formal reviews and documentation of student progress.

13. Does a home school need to be a non-profit entity to be considered a private school?

A home school is not required to be a non-profit entity to be considered a private school. To be considered a private school under IDEA, a home school must provide elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of student progress. However, since the State of Texas and TEA have long recognized home schools as private schools, it is not required or necessary for school personnel to question a home school parent who refer their child for special education services or proportional services beyond what is necessary to conduct Child Find, an initial evaluation/reevaluation for eligibility determination, or IEP/Services Plan development. LEAs are encouraged to develop local policies that balance the requirements of IDEA (Child Find, an initial evaluation/reevaluation for eligibility determination, or IEP/Services Plan development) and the Leeper Decision for determining how much information is needed/necessary from the parent who home schools their child to determine eligibility and services. School districts which become aware of a student who is potentially being home schooled may request in writing a letter of notification from the parents of the student regarding their intention to home-school the student. This letter may require assurances that the home-school curriculum is designed to meet basic education goals including reading, spelling, grammar, mathematics, and a study of good citizenship. Therefore, the letter of assurance should be enough, while requiring that school personnel review the home school's curriculum should not be necessary to implement the requirements of IDEA as it pertains to parentally placed private school students with disabilities.

14. What is a school's responsibility if a parent requests dual enrollment for a child age 3-5?

Parents of eligible students ages 3 or 4 shall have the right to "dual enroll" their student in both the public school and the private school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five or until the student is eligible to attend a district's public school kindergarten program, whichever comes first. The school district where an eligible¹ student resides must convene an Admission, Review and Dismissal (ARD) meeting to determine whether the child is eligible for special education and related services and, if so, the specific services appropriate for the child.

15. Which school district is responsible for providing special education and related services if a parent chooses dual enrollment for a child?

The school district where an eligible¹ student resides is responsible for providing special education and related services associated with dual enrollment if the child's parent chooses that option.

¹ §89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities.

16. What options other than dual enrollment are available to a parentally-placed private school student with a disability?

A parent of a private school eligible¹ student may choose to be considered for a services plan or may choose dual enrollment. A services plan consists of limited special education and related services as determined by representatives of the school district and private school. While a parentally-placed private school student with a services plan may receive limited services, no parentally-placed private school student with a services plan student has a right to receive some or all the services the student would receive if enrolled in a public school.

17. Which school district is responsible for providing a services plan if a parent chooses proportionate share services for a child?

The school district where a private school is located is responsible for providing a parentally-placed private school student with a services plan if the child's parent chooses that option and the student is designated to receive proportionate share services.

18. What dispute resolution options other than filing a complaint are available to parents choosing dual enrollment?

Parents choosing dual enrollment have the option of requesting mediation if there is a dispute regarding the implementation of the student's individualized education program (IEP). Parents of a parentally-placed private school student with a services plan may request mediation only for issues related to special education identification and evaluation. For more information about mediation, contact the Division of Legal Services at (512) 463-9720.

19. Are proportionate share funds required to be used for parentally-placed private school students with disabilities who are identified after the last Friday in October child count?

The amount of proportionate share funds the LEA must spend on providing special education and related services to parentally placed private school children with disabilities is based only on the number of children identified the last Friday in October of the previous year. The proportionate share funds are not calculated on students identified after that date during the year. For example, a child identified the last Friday in October of Year A would be used in the calculation of proportionate share funds to be spent in Year B. A child identified after the last Friday in October of Year A through the last Friday in October of Year B would be used in the calculation of proportionate share funds to be spent during Year C. The count from the last Friday in October of the previous year is used to determine the amount of proportionate share funds to be spent during the subsequent year. The count is not used to determine which parentally placed private school students with disabilities are to be served. Any parentally-placed private school student with a disability may be considered for services. The services do not need to be limited to those children who were included in the count that determined the amount of proportionate share funds. If a parentally placed private school student with disabilities is identified after the last Friday in October of the previous year, the LEA is not prohibited from using its proportionate share funds to provide services for that student if the LEA has proportionate share funds available and the students who were included in the calculation are not adversely affected. If the LEA does not have proportionate share funds because no parentally placed private school children with disabilities were identified the last Friday in October of the previous year, the LEA is not obligated to provide special education and/or related services to a new child during the year in which there are no proportionate share funds.

20. What if the LEA does not spend the entire amount of proportionate share funds?

Under 34 CFR §300.133(a), each LEA is required to spend a minimum amount of its IDEA-B funds 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 the proportionate share funds 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. If, near the end of the carry-over year, it is apparent that all the carry-over proportionate share funds will not be expended, the remaining funds may be expended by the LEA for other allowable costs for students with disabilities in the public schools. This situation should be the exception. It is the clear intent of the Act that LEAs spend these proportionate share funds on providing special education and related services to parentally placed private school children with disabilities. The circumstances of the LEA will determine how soon the LEA may use the remaining carry-over proportionate share funds for the public school students with disabilities. LEAs should take into consideration that the grant year does not end until September 30. The LEA must be very diligent in its consultation process to ensure that every effort was made to use the proportionate share funds for special education and related services for parentally placed private school students with disabilities. The LEA must have documentation of the consultation activities that were conducted throughout the school year. If every effort was made to expend the carry-over proportionate share funds on the parentally placed private school children with disabilities, the LEA, may, at the end of the grant year, adjust its internal accounting records to transfer the unused, carry-over proportionate share funds for expenditures for students with disabilities in the public schools. If the carry-over proportionate share funds are not used or transferred by the end of the carry-over year, the carry-over proportionate share funds will lapse.

21. May proportionate share funds be used for child find, including individual evaluations, or administrative costs?

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 proportionate share funds 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 an LEA has spent an appropriate amount on providing special education and related services to parentally placed private school children with disabilities. The LEA may not expend the proportionate share funds on child find activities, including evaluations, or on administrative costs.