Parentally-Placed Private School Students with Disabilities: Responsibilities and Proportionate Share Calculations

May 21, 2020
NCSI at-a-Glance

NCSI provides TA that builds capacity for lasting impact through a focus on four high-impact transformation priorities and the complementary knowledge and skills needed to achieve them.

### HIGH-IMPACT TRANSFORMATION PRIORITIES

1. **Maximize leadership** to align general and special education systems to close equity gaps
2. **Optimize general supervision**, accountability and support systems to improve results
3. **Operationalize evidence-based practices** for teaching and learning
4. **Actualize improvement** for students with disabilities in low-performing schools

### FOUNDATIONAL KNOWLEDGE AND SKILLS TO ACHIEVE TRANSFORMATION PRIORITIES

NCSI helps states to develop and deepen the foundational knowledge and skills required for sustaining impact in each priority:

<table>
<thead>
<tr>
<th>Priority</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. <strong>Data Literacy:</strong></td>
<td>Collecting necessary data and determining quality, understanding what the data mean, and deriving sensible data-based conclusions to guide decision-making.</td>
</tr>
<tr>
<td>b. <strong>Research-Informed Practice:</strong></td>
<td>Providing effective TA&amp;PD on using high-leverage evidence-based practices (EBPs) for students with disabilities and supporting implementation of EBP frameworks.</td>
</tr>
<tr>
<td>c. <strong>Stakeholder &amp; Family Engagement:</strong></td>
<td>Meaningfully engaging diverse stakeholders and strengthening the role of family members in shaping educational systems and decisions.</td>
</tr>
<tr>
<td>d. <strong>Systems Coherence:</strong></td>
<td>Designing interconnected policies and allocating resources to enable efficiency and effectiveness in developing and implementing strategic improvement plans.</td>
</tr>
</tbody>
</table>
Session Objectives

- Review requirements related to parentally-placed private school children with disabilities
- Review proportionate share requirements
- Share potential solutions and best practices
- Discuss common challenges SEAs and LEAs face in meeting proportionate share and equitable services requirements
- Identify lingering questions for OSEP or TA
What responsibilities do SEAs and LEAs have for parentally-placed private school children with disabilities?
Definition of Parentally-Placed Private School Children with disabilities.

§300.130 Definition of parentally-placed private school children with disabilities.

*Parentally-placed private school children with disabilities* means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in §300.13 or secondary school in §300.36, other than children with disabilities covered under §§300.145 through 300.147 (children placed or referred by public agencies).
Child Find

34 CFR §300.111 Child find. (emphasis added)

(a) General. (1) The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.
Child Find – More Detail

§300.131 Child find for parentally-placed private school children with disabilities.

(a) General. 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, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.

(b) Child find design. The child find process must be designed to ensure—

(1) The equitable participation of parentally-placed private school children; and

(2) An accurate count of those children.
§300.131 Child find for parentally-placed private school children with disabilities.

(c) Activities. In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.

(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under §300.133.

(e) Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with §300.301.

(f) Out-of-State children. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.
§300.132 Provision of services for parentally-placed private school children with disabilities—basic requirement.

(a) General. To the extent consistent with the number and location of 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, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with §300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§300.190 through 300.198.
§300.134 Consultation.

To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult 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 the children regarding the following:

(a) Child find. The child find process, including—

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.
§300.134 Consultation.

(b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b), including the determination of how the proportionate share of those funds was calculated.

(c) Consultation process. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.
§300.134 Consultation.

(d) **Provision of special education and related services.** 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—

(1) The types of services, including direct services and alternate service delivery mechanisms; and

(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(3) How and when those decisions will be made.
§300.134 Consultation.

(e) Written explanation by LEA regarding services. How, 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 will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.
§300.135 Written affirmation.

(a) When timely and meaningful consultation, as required by §300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.

(b) 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.
§300.133 Expenditures.

(a) *Formula.* To meet the requirement of §300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

(1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 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 3 through 21.
Proportionate Share of Funds (cont.)

§300.133 Expenditures.

(2)(i) 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 Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school 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.

(ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §300.13.
§300.133 Expenditures.

(b) *Calculating proportionate amount.* In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under §300.134, 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. (See appendix B for an example of how proportionate share is calculated).
§300.133 Expenditures.

(d) **Supplement, not supplant.** State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part.
§300.141 Requirement that funds not benefit a private school.

(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting—

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.
Use of Personnel

§300.142 Use of personnel.

(a) Use of public school personnel. An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities—

(1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and

(2) If those services are not normally provided by the private school.

(b) Use of private school personnel. An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if—

(1) The employee performs the services outside of his or her regular hours of duty; and

(2) The employee performs the services under public supervision and control.
§300.144  Property, equipment, and supplies.

(a) A public agency must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.

(c) The public agency must ensure that the equipment and supplies placed in a private school—

   (1) Are used only for Part B purposes; and
   (2) Can be removed from the private school without remodeling the private school facility.
§300.144 Property, equipment, and supplies.

(d) The public agency must remove equipment and supplies from a private school if—

(1) The equipment and supplies are no longer needed for Part B purposes; or
(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.
Equitable Services – Rights and Decisions

§300.137 Equitable services determined.

(a) No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(b) Decisions. (1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(d).

(2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities
§300.137 Equitable services determined.

(c) Services plan for each child served under §§300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must—

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and

(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.
§300.138 Equitable services provided.

(a) General. (1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the special education teacher qualification requirements in §300.156(c).

(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
§300.138 Equitable services provided.

(b) Services provided in accordance with a services plan. (1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

(2) The services plan must, to the extent appropriate—

(i) Meet the requirements of §300.320, or for a child ages three through five, meet the requirements of §300.323(b) with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.
Services Plans

§300.132 Provision of services for parentally-placed private school children with disabilities—basic requirement.

(b) Services plan for parentally-placed private school children with disabilities. In accordance with paragraph (a) of this section and §§300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.

(c) Record keeping. Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:

(1) The number of children evaluated;
(2) The number of children determined to be children with disabilities; and
(3) The number of children served.
§300.138 Equitable services provided.

(c) **Provision of equitable services.** (1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided:

(i) By employees of a public agency; or

(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.

(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.
Location of Equitable Services

§300.139 Location of services and transportation.

(a) Services on private school premises. 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.
Transportation

§300.139 Location of services and transportation.

(b) Transportation—(1) General. (i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation—

(A) From the child's school or the child's home to a site other than the private school; and

(B) From the service site to the private school, or to the child's home, depending on the timing of the services.

(ii) LEAs are not required to provide transportation from the child's home to the private school.

(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of §300.133.
Annual Count

• §300.133 Expenditures.

• (c) Annual count of the number of parentally-placed private school children with disabilities. (1) Each LEA must—

• (i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and

• (ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

• (2) The count must be 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.
Complaint Process

§300.136 Compliance.

(a) General. A private school official has the right to submit a complaint to the SEA that the LEA—

(1) Did not engage in consultation that was meaningful and timely; or

(2) Did not give due consideration to the views of the private school official.

(b) Procedure. (1) If the private school official wishes to submit a complaint, the official must provide to the SEA the basis of the noncompliance by the LEA with the applicable private school provisions in this part; and

(2) The LEA must forward the appropriate documentation to the SEA.

(3)(i) If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and

(ii) The SEA must forward the appropriate documentation to the Secretary.
§300.140 Due process complaints and State complaints.

(a) Due process not applicable, except for child find. (1) Except as provided in paragraph (b) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child's services plan.

(b) Child find complaints—to be filed with the LEA in which the private school is located. (1) The procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §300.131, including the requirements in §§300.300 through 300.311.

(2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of this section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.

(c) State complaints. (1) Any complaint that an SEA or LEA has failed to meet the requirements in §§300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in §§300.151 through 300.153.

(2) A complaint filed by a private school official under §300.136(a) must be filed with the SEA in accordance with the procedures in §300.136(b).
Questions?
How can SEAs and LEAs demonstrate they are meeting requirements for private school children with disabilities?
Best Practices – SEA Monitoring

• Fiscal Monitoring
  – Accurate calculation of proportionate share amounts
  – Allowable use of funds
  – Timely expenditure of funds

• Program Monitoring
  – Child find
  – Child count
  – Meaningful consultation
  – Services plans
Best Practices – SEA Written Procedures

- Procedures for obtaining counts of private school counts for allocating IDEA Part B subgrants to LEAs
- State should have written procedures to set up the minimal expectations for LEAs including:
  - Consultation process and timeline
  - Child find and child count procedures
  - Documentation of consultation
  - Model services plan and requirements
  - Allowable use of funds
  - Carryover of funds
Best Practices – LEA Documentation

• Documentation including written affirmation of meaningful consultation among:
  – the LEA,
  – representatives of private schools, and
  – representatives of parents of parentally-placed private school children with disabilities

• Documentation of the equitable services provided and funds expended

• Services plan for each student
Best Practices – Relationships

• Invite all private schools to participate in meetings
• Share data and be transparent about funding and decision-making processes
• Meaningful consultation is annual, but we recommend ongoing conversations about:
  – Equitable services being provided
  – Child find
  – Needs of the students
Additional Questions?
Resources
Proportionate Share Resources

U.S. Department of Education IDEA Topic Areas Website: https://sites.ed.gov/idea/topic-areas/#Private-Schools-Parentally-Placed


Featured Resource

Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools (April 2011)
Proportionate Share Resources (cont.)

• OSEP letters related to private schools: https://www2.ed.gov/policy/speced/guid/idea/letters/revpolicy/tpchwdprivsch.html
  • Letter to Apostle (2012) – obligation when additional children are identified throughout the year
  • Letter to Chambers (2017) – transportation outside of the LEA or state
  • Letter to Goodman (2016) – calculation to be made prior to reduction for CCEIS
  • Letter to Inzelbuch (2015) – individual settlement agreement
  • Letters to Sarzynski (2015) and Corwell (2013) – child find for out-of-State and out-of-country students
  • Letter to Sutton and Rebel (2014) – incidental benefit in private schools
  • Letter to Wayne (2019) – LEA’s responsibility to offer FAPE
What common challenges have OSEP and TA providers identified?
Common Challenges – Have you found a solution?

• Evaluating whether LEAs engage in “meaningful consultation”

• Obtaining accurate counts of parentally-placed private school children with disabilities

• Gaining access to children in private schools for child find and evaluation

• Clarifying responsibilities of the LEA where the private school is located (not the private school of residence)
Common Challenges – Have you found a solution? Continued

• Expending funds
  – Communication about a plan to spend funds
  – Access to schools and children to provide services that have been agreed upon

• Identifying and communicating with representatives of parents of parentally-placed private school children with disabilities
Q&A: Preschoolers

Question: May IDEA proportionate share dollars be used for preschoolers (3-5 year-olds), who are unilaterally placed in private schools by their parent(s) and eligible for special education services?

Answer: Yes, if the private school meets the state's definition of an elementary school and the district develops the appropriate services plan.
Q&A: Software and Technology

Question: May an LEA use proportionate share funds to provide software or technology that the students with services plans could benefit from?

Answer: Yes, if it is part of the equitable services plan. See §300.144(b) Property, equipment, and supplies.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.

(c) The public agency must ensure that the equipment and supplies placed in a private school—

(1) Are used only for Part B purposes; and

(2) Can be removed from the private school without remodeling the private school facility.
Q&A: Supplemental Materials

Question: Are supplemental materials such as books for students with disabilities be an allowable service?

Answer: Yes, if that is agreed to on the services plan for those students.

See: §300.144(c) Property, equipment, and supplies.

(c) The public agency must ensure that the equipment and supplies placed in a private school—

   (1) Are used only for Part B purposes

Letter to OSEP Letter to Sutton and Rubel (2014) – considerations for decisions about benefit to private school vs. incidental benefit
Q&A: Child Count

Question: When calculating proportionate share, is the state required to include private school children found to be students with disabilities after the most recent annual child count?

Answer: No, the LEA is not required to count children found to be children with disabilities after the child count date (between Oct. 1 and Dec. 1). The LEA may provide additional funds (from state funds or IDEA) but it is not required.

See OSEP Letter to Apostle (2012)
Q&A: Child Count Continued

Question: Is the state required to include children who are eligible but not served in its child count?

Answer: Yes, the annual count is of children who are eligible, not children served. See §300.133 (c)(1) Each LEA must—

(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA;

See also question H-2 in the OSEP Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools (April 2011)
Child Count

• **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.

• **Note:** This requires more data than needed for annual 618 data collection, which requires the number of students who are parentally placed and receiving services under a services plan. States should have procedures to gather this information.
Q&A Reallocation of Funds

Question: Is there any guidance on the ability to reallocate funds if they are not used for equitable services after confirmed consultation with the private school?

Answer: Yes, see OSEP Letter to Andrejack (2010)

“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.”
Q&A: Services Plan

Question: Do all students who are parentally-placed in the private school who may simply have some technology provided for their use need a services plan? Are these plans individual or can they be a group plan for the school?

Answer: Each child who receives services, including access to technology, based on their needs should have a services plan describing what they will receive. Services plans for multiple children may be similar.

See 300.138 Equitable services provided.

(b) Services provided in accordance with a services plan. (1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan...
Q&A: Equitable Services during COVID Closures

Question: Should we expect LEAs to provide equitable services during COVID-19 closures?

Answer: Based on non-regulatory guidance from September 2018 for grantees impacted by federally declared disaster areas, LEAs should be consulting/communicating with private school officials to ensure they have access to information about equitable services for their students. Future procedures should include communication process in the event of extended school closures.
Your turn

• Additional questions?
• What are your needs or priorities related to this topic?

Please complete our survey to provide feedback and inform future work.

https://meadowscenter.ca1.qualtrics.com/jfe/form/SV_2l4UHjwOKQI0unr
Next Steps

• This webinar and these slides will be posted to the NCSI website

• NCSI is developing TA materials

• NCSI FST and OSEP webinar related to children who are parentally placed in private schools/proportionate share:
  – June 29, 3 to 4:30 pm ET
  – Registration coming soon
Thank you.

The contents of this document were developed under a grant from the US Department of Education, #H326R190001. However, those contents do not necessarily represent the policy of the US Department of Education, and you should not assume endorsement by the Federal Government. Project Officer: Perry Williams (October 2019)