

The quick reference guides from the National Center for Systemic Improvement (NCSI) are intended to assist states and interested parties in better understanding the basics of fiscal requirements stipulated in the Individuals with Disabilities Education Act (IDEA), the Education Department General Administrative Regulations (EDGAR), and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly known as the Uniform Grant Guidance or Uniform Guidance). This informal guidance does not represent an interpretation of IDEA by the Office of Special Education Programs (OSEP) or the U.S. Department of Education.

I What is the proportionate share requirement?

The proportionate share requirement under IDEA is a provision that requires each local educational agency (LEA) to budget and spend a portion of its IDEA Part B Section 611 and Section 619 annual grant awards for the provision of special education and related services to parentally-placed private school children with disabilities (34 CFR § 300.133). This requirement helps ensure that parentally-placed private school children and youth with disabilities are provided the opportunity to receive equitable services—services that are comparable to those provided to children with disabilities in public schools.

I What are the different types of private school placements for children with disabilities?

Children with disabilities attending private schools generally fall into one of three categories:

1. those placed by their parents, who are not enrolled in the LEA, and for whom the provision of a free appropriate public education (FAPE) is not at issue;
2. those placed by their parents and who are, or previously were, enrolled in the LEA and the provision of FAPE is at issue; and
3. those placed by the LEA as the means of ensuring that FAPE is made available.

This guide covers private school placements of children with disabilities by their parents. The phrase “FAPE is not at issue” means there is no disagreement between the parent and the LEA about the availability of a program to provide FAPE to the child—the parent has placed the child in a private school and is not seeking financial reimbursement for the private school placement.

PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN WITH DISABILITIES

are children with disabilities enrolled by their parents in private, nonprofit, including religious, schools or facilities that meet the definition of elementary school or secondary school as outlined in state and federal regulations, excluding children with disabilities placed or referred by public agencies (34 CFR §300.130).

Children with disabilities ages 3 through 5 who are enrolled by their parents in a private school meeting the state’s definition of a private, nonprofit elementary school are also considered parentally-placed.

I What is the state educational agency's (SEA) role in implementing this requirement?

An SEA must:

- Ensure that all children who reside in the state, including children enrolled in private schools and need special education and related services, are identified, located, and evaluated.
- Provide oversight for each LEA's implementation of the regulations related to children enrolled in private schools by their parents.
- Establish and implement procedures to monitor ongoing meaningful consultation, track and report parentally-placed private school children with disabilities, calculate and use proportionate share funds, provide guidance to LEAs, and ensure the provision of equitable services.

I What is the role of the LEA in implementing this requirement?

Each LEA must:

- Conduct timely and meaningful consultation with representatives of both private school staff and parents of parentally-placed private school children with disabilities (34 CFR §300.134).
- Conduct child find for all children with disabilities, including those who reside outside the LEA's jurisdiction but are parentally-placed in private schools within the LEA's geographical boundaries (34 CFR §300.134(a)(1–2)).
- Calculate the proportionate share of funds (34 CFR §300.134(b)).
- Determine when and how the consultation will occur (34 CFR §300.134(c)).
- Provide equitable services according to a services plan (34 CFR §300.134(d)(1–3)).
- Provide a written explanation to the private school that details the reasons why it chose not to provide services directly or through a contract (34 CFR §300.134(e)).
- Keep evidence of written affirmation signed by representatives of participating private schools to confirm that timely and meaningful consultation occurred (34 CFR §300.135).

I What services can an LEA provide to eligible parentally-placed private school children?

Children with disabilities who are placed in private schools by their parents receive agreed-upon special education and related services as documented in a services plan. The LEA has the authority to make the final decisions with respect to the equitable services that will be provided for eligible children.

Children with disabilities in private schools are not guaranteed a FAPE under IDEA. These children are not entitled to receive some or all of the special education and related services that the child would receive if enrolled in a public school. The LEA must determine what services it will provide after meeting with the private schools and representatives of parents in timely and meaningful consultation.

I How is the proportionate share of funds calculated?

The proportionate share is calculated separately for IDEA Part B Sections 611 and Section 619 subgrants. Children aged three through five may be included in both the Part B Section 611 and Section 619 calculations.

SECTION 611

The LEA, or the SEA on behalf of LEAs, must divide the total Section 611 LEA subaward by the total number of children with disabilities (ages 3–21) enrolled in the LEA's public and private schools, and multiply the result by the number of private school children with disabilities (ages 3–21) enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA.

SECTION 619

The LEA, or the SEA on behalf of LEAs, must divide the total Section 619 LEA subaward by the total number of children with disabilities (ages 3–5) enrolled in the LEA's public and private schools, and multiply the result by the number of private school children with disabilities (ages 3–5) enrolled by their parents in private, including religious, elementary schools located in the school district served by the LEA.

SAMPLE PROPORTIONATE SHARE CALCULATIONS (BASED ON APPENDIX B TO THE IDEA PART B REGULATIONS)

Proportionate Share Calculation for Parentally-Placed Private School Children with Disabilities	IDEA Part B Section 611 (age 3–21)	IDEA Part B Section 619 (age 3–5)
Number of eligible children with disabilities in public schools in the LEA	300	34
Number of parentally-placed eligible children with disabilities in private elementary schools and secondary schools located in the LEA's geographic boundaries	20	2
Total number of eligible children with disabilities	320	36
Proportion of eligible parentally-placed private school children with disabilities	$20/320 = 0.0625$	$2/36 = 0.0556$
Total LEA grant allocation (before any deductions for CEIS)	\$152,500	\$18,000
Multiplied by the proportion of children	0.0625	0.0556
Proportionate share to be expended for equitable services	\$9,531.25	\$1,000

The LEA must use child count data collected each year between October 1 and December 1 for the number of parentally-placed private school children with disabilities enrolled in private schools located in the LEA's jurisdiction to calculate the proportionate share amount that each LEA must spend to provide equitable services in the subsequent fiscal year. The required calculation is described in detail in *Appendix B to the IDEA Part B regulations*.

How may proportionate share funds be used?

Proportionate share funds may be used to provide special education and related services, including direct services, to parentally-placed private school children with disabilities; professional development or coaching for private school teachers who provide instruction to children with disabilities; and consultation to support the needs of the child (see 34 CFR §300.138(c) and 34 CFR §300.142 (a–b)). Proportionate share funds may only be used to meet the special education and related services needs of parentally-placed private school children with disabilities and may not be used to benefit the private school.

I What is the period of availability of LEA parentally-placed proportionate share funds under IDEA?

Funds are available to the LEA during the fiscal year for which funds have been appropriated by Congress. If an LEA has not expended all of its required 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 (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year (see 34 CFR §300.133 (a)(3)).

I What data must an LEA maintain, collect, and report?

Each LEA is required to maintain records and provide the SEA the following information related to parentally-placed private school children with disabilities as outlined in 34 CFR §§ 300.130 through 300.144, which includes but is not limited to:

- the number of parentally-placed private school children with disabilities attending private schools located in the LEA, and ensure the count is conducted on any date between October 1 and December 1, inclusive, of each year;
- the number of children who are evaluated by the LEA;
- the number of children determined by the LEA to be children with disabilities; and
- the number of children who receive equitable services each year (34 CFR §300.132(c)).

The LEA must be able to track children to ensure ongoing communication and continued eligibility determinations.

I Questions for SEAs to Consider

DOES THE STATE HAVE WRITTEN PROCEDURES DETAILING HOW THE SEA AND ITS LEAS IMPLEMENT THE PROPORTIONATE SHARE REQUIREMENTS?

Establishing a clear process and standardized documentation will enable both SEA and LEA staff to document compliance with the proportionate share requirements and ensure the provision of equitable services to parentally-placed private school children.

34 CFR §300.133 (a)(1) & (2)

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.*
- (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 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.*

34 CFR §300.131(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.

HOW DOES THE SEA ENSURE THAT PROPORTIONATE SHARE IS CALCULATED SEPARATELY FOR SECTION 611 AND SECTION 619 SUBGRANTS AND THAT THE APPROPRIATE AGE RANGES ARE USED FOR EACH CALCULATION?

The SEA must provide oversight to ensure that proportionate share is calculated separately for IDEA Part B Section 611 (ages 3–21) and Section 619 (ages 3–5) subgrants and that the appropriate age ranges have been used for each calculation. When calculating proportionate share, children should be included according to their age—not by grade level.

HOW DOES THE STATE DEFINE ELEMENTARY SCHOOL?

The state’s definition of elementary school determines which children are included in the proportionate share child count for Section 619 funds. The state should ensure that LEAs serve children enrolled in a private school or program that meets the definition of elementary school under state law. This is critical for states that do not include or exclude preschool from the state definition of elementary school.

HOW DOES THE STATE DEFINE HOMESCHOOL CHILDREN?

If the state recognizes homeschools as private elementary and secondary schools under state law, children with disabilities who are homeschooled are eligible for equitable services and must be included in the proportionate share calculation.

DOES THE STATE INCLUDE EQUITABLE SERVICES AND PROPORTIONATE SHARE IN ITS FISCAL AND PROGRAMMATIC MONITORING?

In addition to having written procedures, SEAs should regularly monitor LEA compliance with proportionate share requirements to ensure the provision of equitable services and the appropriate use of proportionate share funds. This could entail verifying the calculation for proportionate share, examining how funds were used for allowable expenses, auditing child count procedures, reviewing a sample of services plans, and confirming documentation of the timely and meaningful consultation process.

Resources

IDEA Regulations related to Children With Disabilities Enrolled by Their Parents in Private Schools (34 CFR §§ 300.130 – 300.144)

<https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-B/subject-group-ECFR3556f7ac2fe0a92>

Appendix B to Part 300—Proportionate Share Calculation

<https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/appendix-Appendix%20B%20to%20Part%20300>

OSEP’s Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools (rev. Feb 2022)

<https://sites.ed.gov/idea/idea-files/questions-and-answers-on-serving-children-with-disabilities-placed-by-their-parents-in-private-schools/>

NCSI State Education Agency Self-Assessment for Children with Disabilities Enrolled by Their Parents in Private Schools

<https://ncsi.wested.org/resource/state-education-agency-self-assessment-children-with-disabilities-enrolled-by-their-parents-in-private-schools/>

NCSI’s Proportionate Share Tracker

<https://ncsi.wested.org/resource/proportionate-share-tracker/>

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