North Dakota Department of Public Instruction
The Individuals with Disabilities Education Act
IDEA 2004 Students with Disabilities who Attend Private Schools

Policy Papers in Education
April, 2018

Providing policy guidance to local school districts on important topics
State Superintendent Levi Bachmeier

The reauthorized Individuals with Disabilities Education Improvement Act (IDEA 04) was signed on December 2, 2004. The private school provisions became effective July 1, 2005. IDEA 04 retained much of the prior law regarding students with disabilities who attend private schools. IDEA 04 also made some major changes, notably about the target population for Child Find and the consultation with representatives of private schools regarding the nature and scope of services the public school will provide. The subject of private school children with disabilities breaks down into **three major categories** reflected in IDEA regulations.

In order to facilitate your use of this document, decide which of these categories best fits your particular situation and refer to that section for more detailed guidance.

1. Students placed in approved private/non-public schools by public agencies.
2. Students voluntarily enrolled in an approved private school by parents (parentally placed private school children with disabilities).
3. Students unilaterally placed in an approved private school by parents, due to disagreement about whether a student is receiving a free appropriate public education (FAPE).

1. Students Placed in approved private/non-public schools by public agencies (Regulations 34 CFR secs. 300.145 – 300.147)

The first category includes students placed in private/non-public schools by public agencies. This area of the law remained substantially untouched in IDEA 2004. In this category, the legal standards for the provision of special education and related services are the same as if the student remained in the public school system. The placement is made in accordance with the district or agency placement procedures; all procedural safeguards remain intact; and the student continues to be an enrolled member of the resident school district.

Frequently Asked Questions about *Students placed in private/non-public schools by public agencies.*

1. **May a public school place a student with disabilities in a private/non-public school or facility that does not meet state standards?**

No. Under IDEA 04 regulations, public placements must be made to private/nonpublic schools or facilities that "meet the standards that apply to the state education agency and local education agency." This means the private school or facility must meet state approval standards for the operation of a "non-public" school (used in North Dakota Century Code to refer to private schools) and if responsible through negotiations, IDEA 04 procedural requirements. Private/non-public schools in North Dakota that provide special education and related services to students with disabilities are monitored by the NDDPI to ensure their compliance with State Century Code and with the IDEA.

2. **Who is responsible for reviewing and revising the student's IEP?**

The student's resident school district is responsible for reviewing and revising the student's IEP and other IDEA responsibilities. The resident district and the receiving school may negotiate some of the IDEA responsibilities. The resident school district, however, must ensure that an administrative representative attends the meeting, is involved in any decision about the student's program, agrees to provide any services written into the IEP that the private/non-public school cannot provide, and is responsible for ensuring that the placement is at no cost to the parents of the child. The resident school district must also ensure that procedural safeguards provided the student and the student's parents are intact. The North Dakota Department of Public Instruction (NDDPI) has developed an informational checklist for documenting the negotiated allocation of responsibilities between the placing school district and the receiving private/nonpublic school. This checklist is attached to this policy paper.

3. **Who is responsible for providing and paying for extended school year (ESY) services for publicly placed students with disabilities?**

The resident school district. The resident school district is responsible for ensuring that FAPE is provided. The resident public school district must provide the student with ESY services if the student needs those services. The private/non-public school or facility may agree to provide extended day or year services under direction of the resident school district. If the private/non-public school or facility does not agree to the provision of needed ESY services, the resident school district must make alternate arrangements for those services.

2. Students voluntarily enrolled in an approved private school by parents (Regulations 34 CFR secs. 300.130-300.144)

The second category involves students voluntarily enrolled in approved private schools by parents. In this situation, the student and parents do not question the services offered by the public school. Instead, they seek a package of special education services and programs from the public school offered in conjunction with private education. When parents choose to enroll their child in an approved private school, either nonsectarian or religiously affiliated, the student has no individual right to receive the special education and related services the child would receive if enrolled in the public school. Parentally placed private school students are entitled to some special education and related services according to a proportionate share of funding based on a consultative process for allocating that proportionate share. When public special education services are provided to students voluntarily enrolled in an approved private school by parents, the student is also enrolled as a member of the public school.

These are the requirements in IDEA 2004:

Who gets what?

Children with disabilities who are enrolled by their parents in an approved private school or facility may participate in special education and related services provided by the local education agency (LEA), according to a proportionate share of funding based on a consultative process. Services may be limited compared to what the child would receive if the child attended a public school.

Child Find

- Child Find is the responsibility of the district in which the private school is located. This is a shift: before IDEA 04, Child Find was the responsibility of the district in which the child resided.
- Child Find must be thorough and complete. The LEA must locate, identify and evaluate all children with disabilities who are enrolled by their parents in approved private schools in the public school district. The Child Find process must be completed in a time period comparable to that for other students attending public schools in the LEA.
- The LEA must consult meaningfully (see below) about how private school students suspected of having a disability can participate equitably, including how parents, teachers and private school officials will be informed of the process and how the process will operate throughout the school year.
- The LEA must maintain in its records and provide these figures to the state: the number of private school children evaluated, the number of private school children determined to be children with disabilities, and the number of private school children served.

Timely and Meaningful Consultation

The duty to consider the views of private school representatives is not new, though IDEA 04 expresses it in new language and adds significant new responsibilities for LEA's in the area of consulting with representatives of private schools and representatives of parentally placed private school children with disabilities. These two classes of representatives may or may not be the same individuals. Timely and meaningful consultation must occur during the design and development of special education and related services. Topics that must be addressed in the consultation include:

- Child Find, including how parents, teachers, and private school officials will be informed of the process and how the process will operate throughout the school year.
- Proportionate share of funds and how the amount was calculated.
- The consultation process itself, so that children 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.
    - ✓ Types of services, including direct services and alternate delivery mechanisms
    - ✓ How services will be apportioned if funds are insufficient to serve all children
    - ✓ How and when these decisions will be made.
- How the LEA will give private school officials a written explanation of the reasons why the LEA chose not to provide services, if the LEA disagrees with private school officials on the provision of services or type of services.

The LEA must obtain a written affirmation signed by the representatives of private schools that timely and meaningful consultation has occurred. A private school official may file a complaint with the Department of Public Instruction alleging 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. If the private school official is dissatisfied

with the decision of the Department, the official may appeal the Department's decision to the U. S. Secretary of Education.

Administrative Considerations:

Expenditures

The public school is obligated to expend, for the provision of special education and related services for students placed by their parents in private schools, an amount equal to the proportionate amount of federal funds that were made available to the local education agency through its special education child count. "Proportionate" is defined as "the amount consistent with the number and location of private school children with disabilities" in the school district. The public school must divide the number of children with disabilities voluntarily placed by their parents in private schools by the total number of children with disabilities attending school in the district. That number is then multiplied by the IDEA Part B* funds received by the public school district. The resulting number is the amount the school district must spend for those students voluntarily placed in private schools.

Number of parentally placed private school children
with disabilities attending in district X IDEA Part B funds = proportionate share
Total number of children with disabilities attending in the district

A school district may expend more than the minimum required amount. Keep in mind that no particular child has a right to that money. Rather, the public school meets with private school officials and representatives of parentally placed private school children with disabilities to decide how to spend the money. Keep in mind also that the calculation of proportionate share is based on funding received at the school district level, not the unit level.

*Note: The discussion above addresses funding for students receiving services under IDEA Part B who are ages 3 through 21 ("Section 611" funding). For students ages 3 through 5 who receive preschool services ("Section 619" funding), the school must do a separate calculation of proportionate share.

Frequently Asked Questions about *Students voluntarily enrolled in an approved private/non-public school by parents.*

1. **Are students with disabilities who voluntarily attend approved private schools entitled to receive special education and related services?**

Maybe. It depends on the outcome of the consultation between the LEA and representatives of the private schools and private school children. When parents of a child with a disability voluntarily place their child in a private school, but do not dispute the appropriateness of the public school's program, the child has no individual right to special education and related services. Such students might still be eligible to receive special education and related services, depending on the results of the consultation between the public school and representatives of private schools and private school children. However, the amount of services might not be equal to the same services the child received, or would receive, if enrolled in the public school. To sum up, the public school's obligation is to provide some services according to a proportionate share of funding allocated by a consultative process.

2. **Must the public school district provide every parentally placed student with a disability with the full range of special education and related services?**

No. The public school district, in cooperation with private schools within district boundaries, must determine which services will be provided to parentally placed private school children with disabilities. The local school district may not, on its own, determine that no services will be provided. The services that are provided to parentally placed private school children with disabilities must be comparable in quality, not quantity, to services provided to children enrolled in public schools in the district. However, the services provided private school students might not be the same amount of services provided to students with disabilities who attend the public school.

3. What process does the public school use to meet its obligation for special education and related services to private school students with disabilities within its jurisdiction?

A school district must conduct thorough and complete Child Find activities. The school must maintain its records and provide these figures to the state: the number of private school children evaluated, the number of private school children determined to be children with disabilities, and the number of private school children served. Additionally, through a consultative process, the school district must:

- Consider which students will be served;
- Determine the number of students who will be provided with special education and related services;
- Determine which services will be offered to students with disabilities;
- Decide upon the location at which the offered services will be provided; and
- Decide how the services provided will be evaluated.
- Give private school officials a written explanation of the reasons why the LEA chose not to provide services, if the LEA disagrees with private/non-public school officials on the provision of services or type of services.

School districts are strongly encouraged to have written policies and procedures in place regarding the provision of special education services to private schools. In view of the new provisions that private school officials may file a complaint with the NDDPI alleging the LEA failed to engage in consultation that was meaningful and timely, the adoption of policies and procedures is an essential element of compliance.

4. What would fulfill the public school district's obligation for consultation with representatives of private school children with disabilities?

Consultation must occur in a "timely and meaningful" way according to IDEA 04. The public school must give representatives of private school children with disabilities and private school officials a genuine opportunity to express their views. The LEA must obtain a written affirmation signed by the representatives of private schools that timely and meaningful consultation has occurred. This consultation must take place during the design and development of special education and related services. Best practice suggests the consultation be completed prior to the beginning of each school year; with the understanding that fluctuations in student enrollment or student needs may require subsequent consultations during the school year. The LEA must make the final decisions with respect to the services to be provided to eligible private school children. A model form for written affirmation that timely and meaningful consultation has occurred is attached to this policy paper.

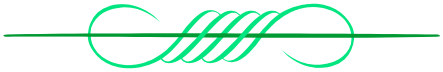
5. Who is responsible for the preparation of a "services plan" for the private school students with disabilities who receive services from the public schools?

The public school. A "services plan" is IDEA's term for an IEP for a student with disabilities voluntarily enrolled by the parents in a private school. The public school district in which the private school is located is responsible for conducting meetings to determine whether the student has a disability (or continues to have a

disability or needs special education), which services will be provided, and to review and revise each student's services plan annually. The services plan must include a description of the specific special education and related services that the public school district will provide to the child and must, to the extent appropriate, meet the content requirements for an IEP.

6. **Are students with disabilities educated in private schools afforded the same due process rights as are provided to students with disabilities who are educated in public schools?**

No. Even if a child's parents believe that components of the services plan are not implemented as written, due process rights do not apply. Due process does apply to Child Find and evaluation activities conducted for private school children by the public school. Parents of a parentally placed private school student with a disability **may** initiate a state complaint investigation by filing a complaint with the Department of Public Instruction, Office of Special Education.



Frequently Asked Questions about *Expenditures for students voluntarily enrolled in a private school by parents*:

1. **Are Child Find activities eligible for inclusion in proportionate dollars to private school students?**

No. School districts have an affirmative obligation to locate and identify all children with disabilities within their jurisdiction without the use of proportionate dollars.

2. **May proportionate dollars be used for children in private residential centers, placed by the local education agency?**

No. See the previous discussion of publicly placed children in private facilities, Category No. 1.

Other Factors:

Location

A public school district may provide services on the premises of the private or religiously affiliated school.

Use of private school employees:

A school district may use its federal funds to pay for the services of an employee of the private school if:

- The employee's services are outside of the regular hours of duty at the private school; and
- The employee is under the supervision and control of the public agency.

Personnel Standards

Personnel meeting the same state standards as personnel providing services in the public schools must provide services to children with disabilities voluntarily placed by parents.

Nonsectarian Services

IDEA 04 specifies that services provided to private school students must be "secular, neutral, and nonideological."

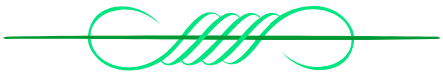
Funds under state control

IDEA 04 specifies that funds that are available to serve students voluntarily placed in private schools shall be controlled and administered by a public agency.

Transportation

If it is necessary for a child to benefit or participate in services, the public school must provide transportation for the private school student in the following instances:

- From the child's private school or home to a site other than the private school; and
- From the site of that service, back to the private school or home.



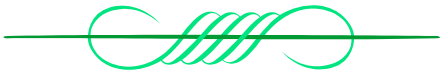
Frequently Asked Questions about *Transportation for Students voluntarily enrolled in a private school by parents:*

1. **Are school districts required to provide transportation from a child's home to the private school?** No, unless the transportation from home to the private school is a service determined through the consultation process.

2. **May the cost of transportation be included in the calculation of the "proportionate expenditures"?** Yes.

3. Students unilaterally placed in an approved private school by parents due to disagreement about whether a student is receiving FAPE (Regulations 34 CFR secs. 300.148 – 300.150)

The third category involves instances when the public school's special education services provided to a student with a disability are not perceived by the student's parents as providing a Free Appropriate Public Education (FAPE). As a result, the parents withdraw their child from the public school and enroll the student in a private school that they believe will provide an appropriate education for their child. This event is considered a unilateral placement by a parent. Upon enrollment in the private school, the parents of the student seek to be reimbursed for the cost of the private school education because of the district's alleged failure to provide an appropriate education. Parents may initiate a due process proceeding to determine whether the district must pay for the private school placement. IDEA sets out some procedural requirements that parents must meet in order to make a claim for enrollment costs based on a unilateral parental placement due to a disagreement about FAPE. Parents must give the public school advance notice of their intent to withdraw their child from public school and place the child in an approved private school due to disagreement about FAPE.



Frequently Asked Questions about *Students unilaterally placed in an approved private school by parents.*

1. **When are parents of children with disabilities eligible for reimbursement of the costs of a unilateral placement in an approved private school?**

Parents may be eligible for reimbursement of the cost of a unilateral placement in a private school if:

a. The student had been receiving special education and related services prior to removal by the parents from the public school's program; and
b. A court or hearing officer has determined that the school district did not make a FAPE available to the student in a timely manner while the student attended the public school.

2. Under what circumstances could the cost of a unilateral placement be denied?

Costs to parents could be denied under the following conditions:

- Prior to parental removal of the student from the public school, the district informed the parent of its intent to evaluate the student and the parents failed to make the student available for the evaluation.
- A court or hearing officer finds the parents' action was unreasonable.
- The parents did not inform the district that they rejected the placement proposed by the district to provide FAPE and did not state their concerns and intent to enroll the student in an approved private/non-public school. The parents must give notice that they plan to remove the student from the public school. Notice may be given 2 ways:

  A. Notice may be given to the IEP team at the most recent IEP meeting that the parents attended prior to removing the student from the public school; or
  B. Notice may be given to the district in writing at least 10 business days prior to removing the student from the public school.

3. Are there any exceptions to the requirement to provide notice to the public school that the parents plan to remove the student?

Yes. Reimbursement of enrollment costs may not be reduced or denied for failure to provide the notice to public school when:

- The district's proposed placement would result in physical harm to the student;
- The district prevented the parent from providing the notice; or
- The district did not notify the parent of the obligation to provide the notice.

At the discretion of the hearing officer, reimbursement may not be reduced or denied for failure to provide notice to the public school when.

- The parent is illiterate and cannot write in English; or
- Reduction or denial would likely result in serious emotional harm to the child.

North Dakota Department of Public Instruction- Special Education Procedural Checklist
For Placements at In-state Approved Private Residential Facilities/Schools
Sept. 2013

Name of Resident District: _____Signature of Representative _____

Name of Special Education Unit: _____

Name of Private Facility: _____Signature of Representative_____

Timeline of this Agreement: _____

According to federal regulations and North Dakota Century Code, the resident district and its special education unit are responsible for the following IDEA procedural issues. The resident district or its representative from the special education unit may, however, negotiate with the private residential facility to determine who will carry out the procedures whose cells are blank in the checklist below. This document will be used in the NDDPI focused monitoring process and to define the allocation of responsibilities in any dispute or complaint. Copies should be kept by both the special education unit director of the resident district and the appropriate representative of the facility. Please notice that entries into the state's TieNet case management system are included with each procedure requiring such entry. Both the special education unit of the resident district and the facility are responsible for any training of personnel on the TieNet system that is needed to carry out these entries.

Directions: Discuss the procedures to develop a common understanding. Come to agreement on those with an option. Document your agreement by placing an "X" in the appropriate cell for each procedure. You may also want to put a short summary of explanation.

Procedure	Local Education Agency Will Carry Out Procedure	Private Facility Will Carry Out Procedure
Set up Annual IEP Review. (TieNet- Prior Written Notice form)		
Provide Procedural Safeguards & Explanation at Appropriate Times.		
Participate in IEP meeting.	LEA rep must attend	Facility rep must attend
Arrange for Participation of Required Team Members.	LEA rep- arrange to have all IDEA required participants in attendance	Facility rep- arrange to have appropriate personnel from Facility in attendance
Conduct Mtng. Write and Disseminate the IEP. (Appropriate TieNet IEP forms)		
Complete and Send Progress Reports According to Timeline listed in IEP. (TieNet- Progress Report forms)		
Prior Written Notice for 3 year Re-evaluation. Review Student Profile and Determine if a Re-evaluation is needed. (TieNet- PWN form & Student Profile)		
Gain Consent for Evaluation, if needed, then Develop Assessment Plan. (TieNet PWN, Consent forms, Assessment Plan)		
Conduct Assessment(s), if needed. Summarize & Conduct Mtng. to determine eligibility. Finalize IWAR. (TieNet- IWAR)		
Requests for Independent Evaluations.	LEA- arrange for any requested & agreed upon Independent Evaluations	Facility- refer to LEA & make student available for Independent Evaluation
Review and Amend Educational Records.	LEA- responsible for any review and amendment to an educational record.	Facility- refer to LEA when a request for review or an amendment is received.
Due Process Procedures re: IDEA complaints &/or hearings.	LEA- responsible for any due process procedures due to a complaint, request for hearing, etc.	Facility- refer to the LEA.
Identification- Student not already identified is suspected of having a disability.	LEA- responsible for initiating all appropriate procedures	Facility- refer to the LEA

(School District Name)
Special Education

WRITTEN AFFIRMATION OF CONSULTATION

Private School(s) Consulted _____

Private School Official(s) _____

Representative(s) of parents of parentally placed private school children_____

Date of Consultation_____

It is affirmed that the private school consultation process included discussion of:

- 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;
  Describe_____
- The determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities, including the determination of how the amount was calculated;
  Describe_____
- How the consultation 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;
  Describe_____
- 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 these decisions will be made; and
  Describe_____
- 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 shall 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.
  Describe_____

_____ _____
Signature of Private School Official Date

_____ _____
Signature of Private School Official Date

_____ _____
Signature of Special Education Official Date