

Private Schools/Equitable Participation

Equitable Participation Q & A

The revision to IDEA in 2004 and the subsequent 2006 IDEA regulations significantly changed the obligation of States and LEAs to children with disabilities enrolled by their parents in private elementary and secondary schools. Section 612(a)(10)(A) of the Act and Sections 300.130 – 300.144 now require LEAs (IUs in Pennsylvania) in which the private schools are located, rather than the LEAs in which the parents of such children reside, to conduct child find and provide equitable services to parentally-placed private school children with disabilities.

The Act provides, that, in calculating the proportionate amount of Federal funds under Part B of the Act that must be spent on parentally-placed private school children with disabilities, the LEAs (IUs in Pennsylvania) where the private schools are located, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private elementary schools and secondary schools located in the LEAs (IUs in Pennsylvania). In addition, after timely and meaningful consultation with representatives of private elementary schools and secondary schools and representatives of parents of parentally-placed private school children with disabilities, there is an obligation of the LEA (IU) to spend a proportionate amount of funds to provide services to children with disabilities enrolled by their parents in private school. The amount of funds available for EP is now based on the total number of children with disabilities who are enrolled in the private schools located in the LEA (IU) whether or not the children and their parents reside in the LEA (IU).

The following are answers to questions raised regarding equitable participation in PA.

Child Find and Evaluation

1. What educational agency has Child Find responsibilities for Equitable Participation (EP)?

A. In PA, the IU has child find responsibilities for EP. For purposes of FAPE, the school district of residence has child find responsibilities; whereas for purposes of equitable participation, the responsibility rests with the local education agency where the private school is located. In Pennsylvania the local education agency for equitable participation is the Intermediate Unit where the private school is located. It is conceivable that a parent could obtain evaluations from both entities.

2. When an LEA (IU) conducts an evaluation, should the LEA (IU) automatically ask for parental consent to share the findings with the district of residence?

A. 34 CFR 300.622(b)(3) states that if a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials of the LEA of the parent's residence.

An IU may request from the parent permission to share the evaluation information with their district of residence, however, the IU may not require that a parent grant this permission in order to move forward with the EP evaluation.

3. Do the 2006 IDEA regulations allow for different types of evaluations if the parent clearly requests EP services rather than FAPE?

A. No, 34 CFR 300.131© states that in carrying out the requirements of this section (Child find for parentally placed private school children with disabilities_), the LEA , or if applicable the SEA must undertake activities similar to the activities undertaken for the agency's public school children.

4. Who makes the eligibility determination?

A. Eligibility is determined by a group of knowledgeable professionals and the parents for both FAPE and EP. For purposes of FAPE, the qualified professionals should be from the district of residence; for EP purposes, the qualified professionals should be from the IU where the private school is located.

5. What process is required when the parent is seeking FAPE?

A. (a) Evaluation; (b) Eligibility determination; (c) Offer of FAPE by the school district of residence; (d) Acceptance or refusal of FAPE by the parents.

6. What process is required when the parent is seeking EP only?

A. (a) Evaluation; (b) Eligibility determination; (c) Offer of an EP Services Plan may occur if the LEA (IU in PA) and private school agencies have determined that the EP funds will be directed to direct service for an individual student, however, there is no entitlement to EP services for individual children; therefore, the sequence may end at step (b).

7. If the parent is undecided regarding EP or FAPE what would the process be?

A. The LEA (IU) must inform the parents of the child find process; PDE recommends use of the public information brochure developed by PaTTAN, King of Prussia available to all IUs. Once the parent understands the options, they are better prepared to make the choice between EP and FAPE. The parent may also contact their local school district regarding the availability of FAPE in the public school.

8. Can parents insist that the school district of residence conduct an evaluation even if they know they do not want FAPE, and they indicate at the onset their intention is EP services at the private school?

A. A parent can request an evaluation from their school district of residence under any circumstances. The school district has the option of either conducting the evaluation or issuing a Notice of Recommended Educational Placement (NOREP) declining to evaluate and offering the parents the opportunity to initiate due process proceedings. The resident district cannot refuse to evaluate a child because the child is attending a private school or because the IU also has a duty to evaluate the child.

Provision of Services

9. What is an Equitable Participation Services Plan?

A. An EP Services Plan means a written statement that describes the special education and related services the LEA (IU) will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive direct services, including the location of the services and any transportation necessary.

10. Does every student getting direct EP services get an Equitable Participation Services Plan?

A. Yes, every student who has been designated to receive direct services would have an EP Service Plan.

11. If a child is not getting a direct service should they have an Equitable Participation Services Plan?

A. If through the timely and meaningful consultation between the private schools and the LEA (IU) where the schools are located, EP includes services such as teacher consultation and/or professional development only; there would be no individual services plan. These services would be outlined in the EP Services agreed to by the LEA (IU) and the private schools through timely and meaningful consultation.

12. What does an Equitable Participation Services Plan look like?

A. 34 CFR 300.138(b)(2) state that the services plan must, to the extent appropriate meet the requirements of 300.320. The requirements of 34 CFR 300.320 are the required contents of an IEP for a student attending public school.

13. Can a child have an Equitable Participation Services Plan and an IEP?

A. A child would not have both an EP Services Plan and an IEP; an EP Services Plan describes the EP services; while the IEP describes the FAPE. A child is eligible to receive EP services in a private school within the allowable federal expenditures and federal regulation related to equitable participation. FAPE is an entitlement that is made available to students enrolled in public schools who are found eligible for special education. There is no entitlement to the provision of FAPE when a parent unilaterally places their child in a private school. A district is permitted to provide FAPE in a private school when a parent unilaterally places their child there however the district is not mandated or required to provide such services.

14. Can a child have a Chapter 15 Service Agreement and a EP Services Plan?

A. No. 22 Pa Code 15.2 defines a student who is eligible under Chapter 15 as a student who is not eligible as defined under Chapter 14. To be eligible for EP a student would have to be eligible under Chapter 14 as a student who is eligible for special education. By definition a student who is eligible under Chapter 15 is not eligible under Chapter 14 and therefore not eligible for EP.

15. Once a student receives EP Services, when may the services end?

A. A student no longer receives EP services when he is no longer eligible for such services; when funds for EP Services are exhausted; or after timely and meaningful consultation with representatives of private elementary schools and secondary schools and representatives of parents of parentally-placed private school children with disabilities, the LEA (IU) determines that it will no longer offer the type of services that the student receives.

16. How often must a student receiving EP services be re-evaluated?

A. A student receiving EP services must be re-evaluated following the same timelines for reevaluation as students with disabilities in public school.

17. Does the LEA where the private school is located (IU) notify the district of residence that a re-evaluation is needed?

A. No, the LEA where the private school is located (IU) is responsible for conducting the re-evaluation. In fact, the LEA (IU) would have to secure written consent to share such information with the district of residence.

Record Keeping and Funding

18. Who keeps data regarding EP services?

A. 34 CFR §300.132(c) requires that each LEA(IU)where a private school is located must maintain in its records, and provide to the SEA, the number of students evaluated, the number of students determined to be eligible for services, and the number of students served through EP services regarding parentally-placed private school children.

19. May IUs charge the districts of residence?

A. No, charging back to the district of residence is not permitted by IDEA.

20. Who pays for evaluations for EP services?

A. 34 CFR §300.131(a) requires that the LEA (IU) where the private school is located pays for these evaluations. 34 CFR §300.131(d) makes it clear that money for child find and evaluations cannot be subtracted from the funds available for EP services.

21. How are Equitable Participation amounts calculated?

A. Appendix B to the Part 300 Regulations provides a thorough explanation of proportionate share calculation. An example from that appendix follows:

Number of eligible children with disabilities in public schools in the LEA (IU) 300

Number of parentally-placed eligible children with disabilities in private elementary schools and secondary schools located in the LEA (IU) 20

Total number of eligible children 320

Total allocation to LEA (IU 30) \$152,000

Divided by total number of eligible children 320

Average allocation per eligible child 476.5625

Multiplied by the number of parentally placed children with disabilities 20

Amount to be expended for parentally-placed children with disabilities \$9,531.25

22. Can students receiving EP services be included on the Penn Data Child Count?

A. No, only students receiving FAPE can be counted for the Penn Data Child Count. The fact that these students can not be counted on Penn Data Child Count does not affect the amount of IDEA funds the IU receives. The IDEA allocation for each IU is based on a federal formula which considers population and poverty.

Federal data reports do include reporting on parentally placed students in private schools however this is not the individual child count for students receiving FAPE provided by the public school.

Other

23. Does EP apply when a Kindergarten class is not in an elementary school?

A. No, EP applies in elementary and secondary schools that meet the statutory definition of an elementary or secondary school.

24. Does EP apply if the parent enrolls and pays for their child in an approved private school?

A. Although the regulations are silent on this point, it is the position of PDE that EP applies to any student identified with a disability who is parentally placed in any private school that meets the definition of either an elementary or secondary school.

25. Does the documentation of the consultation process between representatives and parents of the private school with representatives of the LEA (IU) where the private schools are located, need to be included as part of the IU IDEA Special Education Application?

A. Yes, the documentation of the timely and meaningful consultation process between the private and public schools needs to be included as part of the annual IU Special Education IDEA – B Application.

26. If the private school official wishes to file a complaint with PDE, how should they proceed?

A. Complaints regarding EP in Pennsylvania will be handled through the PDE's Complaint Management System and should follow the procedures outlined at www.pattan.net

27. Is there or is there not the possibility to carry over EP funds from one year to another?

A. Yes, federal regulations at 34 CFR 300.133 (a)(3) state if an LEA has not expended for equitable services all of the funds of this section 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 for one additional year.

28. Are EP services restricted to non-profit schools?

A. Yes, 34 CFR 300.130 states 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.

The definition of elementary school at 300.13 states elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law. Secondary school at 300.26 states secondary school means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

29. When it is appropriate to develop an individualized EP Service Plan for a student or students, are there components of the current Individualized Education Program (IEP) plan that do not need to be included or addressed as part of the EP service plan development process?

A. It is difficult to generalize what should or should not be a part of the services plan because each situation is different. 34 CFR 300.138(b)(2) states that the services plan must, **to the extent appropriate** meet the requirements of 34 CFR 300.320. The requirements of 300.320 are the required contents of an IEP for a student attending public school. OSEP states in the discussion section of the regulations that "the EP services plan must describe the specific special education and related services offered to a parentally-placed private school child with a disability designated to receive services. The services plan also must, **to the extent appropriate**, meet the IEP content, development, review, and revision requirements described in section 614(d) of the Act." Therefore, if a particular section is not necessary to describe the services that the student will be receiving, that section in the service plan could be marked as not applicable. The only section that clearly is not required under the state or federal regulations is the participation in statewide assessment, as students unilaterally enrolled by their parents in private schools are not mandated to take the statewide assessments. Therefore, it would be allowable for this section to be eliminated for EP services.

30. If an EP service plan is developed for a student, is it necessary to provide the IDEIA procedural safeguards notice to the parents at the conclusion of the process?

A. No. The procedural safeguards notice is related to the provision of FAPE. EP services do not provide FAPE and the parents are not entitled to the same procedural safeguards as students in the public schools.

31. Why is the Notice of Recommended Education Placement (NOREP) not required as a part of the development and implementation of an EP service plan?

A. It is not needed because the NOREP is designed to provide the parent with the procedural safeguards and informed consent of the acceptance or rejection of FAPE in the public school. The EP services plan only describes the services the student is receiving and are available at the school as determined by the private schools within the LEA in collaboration with the LEA.

32. Is Least Restrictive Environment (LRE) a component for consideration in the development and implementation of an EP Service Plan?

A. No.

33. In what circumstances, if any, is it appropriate for an intermediate unit to issue a NOREP as a part of the EP process?

A. The NOREP is issued in the EP process when the evaluation of the child identifies the child as not eligible for special education services. In those circumstances a NOREP is issued as the parents have the right to contest the identification of the child through due process.

34. Is there a provision in the EP regulations for parents to request an Independent Education Evaluation (IEE) as a part of the evaluation process for EP services?

A. No. The IEE at public expense is only available for those students seeking FAPE, not EP services. If the parent is seeking FAPE, the school district of residence would then be the entity responsible for the parent to exercise that option.