

Questions and Answers regarding Act 89 and Equitable Participation (IDEA)

Evaluations

- 1. Students enrolled in private/nonpublic schools may be evaluated pursuant to Pennsylvania’s Act 89 law and/or the IDEA’s Equitable Participation provisions. Is there a difference between the two types of evaluations?**

Yes. As described in more detail throughout this Q&A, the purpose of an Act 89 evaluation and an IDEA Equitable Participation evaluation is different. An Act 89 evaluation identifies a student’s strengths and weaknesses and is used to assist the private/nonpublic school in educating the student. An IDEA Equitable Participation evaluation determines whether a student is eligible for IDEA services and requires a two part analysis: 1) the identification of an IDEA disability, and 2) a determination that the student requires specially designed instruction.

- 2. What is the purpose of the Act 89 psychologist?**

The type and scope of psychological services under Act 89 is determined by each Intermediate Unit (IU). The Act 89 evaluation identifies strengths and needs of students in private/nonpublic schools. Act 89 evaluations occur at the request of the nonpublic school and with parent consent. Evaluations may include reports on students’ academic ability, academic achievement, social/emotional development, and behavior. The Act 89 evaluation, however, does not determine a student’s eligibility for IDEA services.

- 3. May Act 89 funds be used to have an Act 89 psychologist do a psycho-educational evaluation?**

Yes, Act 89 funds may be used for psycho-educational evaluations as determined by each IU. The results of the Act 89 evaluation may be used to assist in the determination of eligibility for special education services.

- 4. Are there any restrictions on responsibilities or duties regarding the use of psychologists funded under Act 89?**

The definition in 24 P.S. 9-922.1-A(b) lists some of the services that may be provided under Act 89. Act 89 does not detail any restrictions on a psychologist’s responsibilities or duties. Specific restrictions and responsibilities are determined by each IU.

- 5. May Act 89 funded psychologists complete special education evaluations that determine eligibility under IDEA?**

The Act 89 psychological report does not meet the requirements of the IDEA and may not be used in isolation to determine eligibility under IDEA; however, the results from the Act 89 psychological report may be considered as part of the data reviewed during an initial evaluation for special education.

- 6. When a Prior Written Notice for Initial Evaluation and Request for Consent, formerly Permission to Evaluate (“PTE”) is issued following an Act 89 funded evaluation, and an IDEA evaluation includes a review of the Act 89 report, may the Act 89 psychologist fulfill the role of a psychologist on the IDEA evaluation team or is a differently funded psychologist required?**

The involvement of a licensed school psychologist in the determination of eligibility for special education services is required by the state special education regulations for specific disability categories (22 Pa. Code §14.123(a)). Each IU determines procedures and process for involvement of the Act 89 psychologist in the special education eligibility evaluation process. The purpose of a special education evaluation is not solely for a diagnosis; the evaluation for special education eligibility requires a determination that the child has a disability in one of the IDEA categories **and** that the child needs specially designed instruction.

7. **Why would the IU conduct an Act 89 evaluation instead of a special education evaluation under the IDEA?**
Each IU determines the procedures and process for Act 89 services including the psychological evaluations available to private/nonpublic schools. Act 89 evaluations can provide information to private/nonpublic schools to help the private/nonpublic school plan programs and services to meet the needs of the students within the private/nonpublic school setting. If the purpose of an evaluation is to determine special education eligibility, however, parent consent and specific procedural safeguard notices are required under IDEA that are not required under Act 89.
8. **Does a student require an IDEA evaluation if speech services are requested under the IDEA’s Equitable Participation provisions?**
Yes, there are no partial evaluations under IDEA.
9. **If an IU has a psychologist complete an IDEA evaluation, what is the funding stream?**
IDEA does not allow the use of Equitable Participation funds to pay for any evaluations. Each IU must determine how to pay for IDEA evaluations of private/nonpublic school students.
10. **Can exchange students attending private/nonpublic schools go to the school district of residence to get a special education evaluation?**
The parent/guardian (host family) may request an evaluation from the IU or from district of residence.

Table 14

11. **Please clarify which students are counted as students with a disability and reported in Table 14?**
Any student with a disability that has been determined eligible under IDEA regulations and has been unilaterally placed by a parent in a private/nonpublic school is reported in Table 14. Table 14 must count ALL eligible students with disabilities and mark services plan “yes” or “no”.

Services available to pre-K and Kindergarten Students

12. **Does Equitable Participation apply to ages 3 -21?**
Yes, if the private/nonpublic school meets the definition of elementary or secondary school under Pennsylvania law.
13. **If a student is in a private/nonpublic school that ONLY has kindergarten, is the student eligible for Equitable Participation services?**
No, except in circumstances where the private school also meets the definition of elementary or secondary school under Pennsylvania law.
14. **Please clarify regarding 4 year olds eligibility for Equitable Participation services?**
In order for a 4 year old to be eligible for IDEA’s EP services, the school must meet the definition of elementary school under Pennsylvania law. Under Act 89, the school must have at least Kindergarten or above for students to receive Act 89 services.
15. **Some schools are Pre-K or K-3 are they eligible under Act 89?**
Pre-K and K-3 are not eligible under Act 89.

Child Find/Services/FAPE

16. **When a parent seeks an IDEA evaluation from a district, districts are not permitted to ask a parent if the parent intends to enroll the student in the district. Under what instances would a district decide that it will not proceed with development of an IEP?**

Discussions between the district and parent regarding IEP development and offer of FAPE may occur after the evaluation is complete and the student is identified as eligible for IDEA services. There is a distinction between asking parents about the intent to enroll in order to avoid child find or IDEA responsibilities as compared to development of IEP and offer of FAPE following determination of eligibility.

17. What if the parent contacts the District of Residence for a special education evaluation and the district asks, 'Are you going to bring them back?' Parent responds 'no' and the District refers the parent to the IU for an evaluation?

At the evaluation stage, the district may not ask about a parent's intent to enroll in the district. The district has a child find responsibility and a refusal to conduct the IDEA evaluation requires the district to issue a NOREP/PWN. For district referred students, the IU could recommend that parent request a NOREP/PWN from district and pursue mediation or due process. The IU or parent may also file a complaint with BSE regarding any non-compliance.

18. If a child is eligible for special education, can any EP funds be used for interpreters?

EP funds may be used for interpreters. The use of EP funds is determined annually at the IU/private/nonpublic school consultation meeting and must be part of that agreement.

19. How can the IU address concerns about districts that are attempting to avoid the child find responsibility and still maintain a positive relationship with districts?

BSE reviews the child find process and procedures during the cyclical monitoring for areas of non-compliance. In addition, the IU may bring concerns to the BSE special education adviser assigned to the IU's region.

20. Can Act 89 services be provided in a church or synagogue?

No, Act 89 services cannot be provided in the place of worship. Act 89 services may, however, be provided in the school associated with the place of worship in separate physical space for education.

5. May a student with a visual disability be dually enrolled in a public and a private/nonpublic school?

Yes, the parent may request dual enrollment from the district. The district makes a decision and informs the parent. Dual Enrollment does not entitle the parent to request or receive FAPE/related services.

21. Can Act 89 funds be used to pay for vision services?

Yes, if that was determined through consultation between IU and the non-public schools, then Act 89 personnel could provide it.

22. Can a district pay for services provided to students enrolled in private/nonpublic schools?

Yes. However, if a district pays for services for a student, the IU may not use Act 89 funds to provide services for those students.

Relevant law

- 24 P.S. § 9-922.1-A (Act 89 of 1975, as amended)
- 22 Pa. Chapter 112
- 20 U.S.C. § 1412(a)(10)