

Questions and Answers on IDEA and Private Schools

- 1. Which LEA (Local Educational Agency) is responsible for the requirements relating to parentally-placed private school students with disabilities, the LEA where the child's private school is located or the LEA where the child resides?**

With the enactment of the IDEA 2004 (the Individuals with Disabilities Act) in December 2004, the responsibility for implementing the requirements for parentally-placed private school students with disabilities changed from the LEA where the student resides. It is now the responsibility of the LEA where the student's private school is located.

- 2. To which children do the IDEA requirements for parentally-placed private school students with disabilities apply?**

The IDEA provisions relating to parentally-placed private school students with disabilities apply to all parentally-placed children with disabilities attending private elementary and secondary schools, see 34 CFR § 300.130.

- 3. Does the IDEA have the same requirements for parentally-placed private school children, aged three through five, as it does for public school children of the same age?**

No. Children aged three through five placed by their parents in a private school are not necessarily entitled to the requirements of the IDEA unless they are enrolled in an elementary school as defined under New Mexico law (NMSA 22-1-3(A)) and Federal regulations at 34 CFR § 300.133 (a)(2)(ii).

For three to five year old children, the responsibility for Child Find, including evaluation, remains with the LEA where the child resides. Three-year-old and four-year-old children continue to have individual entitlements to Free Appropriate Public Education (FAPE) in the public school from their LEAs of residence.

- 4. Do the IDEA requirements for parentally-placed private school students with disabilities apply to children in home-based private educational programs or home schooling?**

No. These provisions apply only to children attending private elementary and secondary schools. Under New Mexico law, a home-based private educational program is not a private school. Therefore, IDEA provisions relating to parentally-placed private school students do not apply to children in home-based private educational programs or "home schools."

5. What specific child count information must the LEA maintain and report to the New Mexico Public Education Department (NMPED)?

The LEA must maintain in its records and provide to the NMPED the number of parentally-placed private school students evaluated, the number determined to be children with disabilities under the IDEA, and those to whom services were provided. 34 CFR § 300.132(c)(1)(2)(3) This information is submitted as part of the LEA's annual IDEA sub-grant application and will appear as data in the Student Teacher Accountability Reporting System (STARS).

6. What services must an LEA provide to a parentally-placed private school student with a disability?

Children with disabilities who are parentally-placed in a private school are not automatically entitled to all privileges and services they would receive if enrolled in a public school. 34 CFR § 300.137(a) Each LEA is responsible, however, for locating, identifying, and evaluating all students with disabilities enrolled in private schools within its jurisdiction, see 34 CFR § 300.131(a).

The LEA is responsible, as well, for making the final decisions with respect to the services to be provided and in conducting meetings to develop, review, and revise these services, see 34 CFR §§ 300.137(b)(c)(1).

After initially evaluating a student and determining eligibility for special education, the LEA where the private school is located should explain to the parents what services are available if the student remains in the private school. If the student remains in the private school and receives services from the LEA, the LEA must develop a "Services Plan" for the student. This plan must describe the specific special education and related services that the LEA will provide to the child, see 34 CFR § 300.138(2)(b). Also, the LEA must inform the parents that the student's LEA of residence is responsible for providing the child free appropriate public education (FAPE) if the student leaves the private school and enrolls in public school. If the parent makes clear his or her intention to keep the child in the private school, the LEA where the child resides does not have to create an IEP and offer FAPE.

7. How does the LEA determine the number of students with disabilities in calculating the proportionate share of IDEA funds it must spend?

In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children (ages 5 through 21) with disabilities, the LEA must conduct and complete a thorough Child Find to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. The LEA must ensure that the count is conducted between October 1st

and December 1st of each year or by the annual child count date set by the New Mexico Public Education Department. This count must be used to determine the amount the LEA must spend on providing equitable special education and related services to parentally-placed private school children in the next fiscal year as provided in 34 CFR § 300.133.

8. What does the LEA do if it is unable to spend the entire proportionate share of its IDEA funds by the end of the fiscal year?

If the LEA has not expended the entire proportionate share of its IDEA funds by the end of the fiscal year, the LEA must obligate the remaining funds for services for parentally-placed private school students with disabilities during a carry-over period of one additional year. The LEA must enter the proportionate share in the uniform chart of accounts.

9. To what extent is the LEA responsible for documenting that it has engaged in a timely and meaningful consultation with private schools regarding provisions of the IDEA including Child Find and Proportionate Funding?

LEAs are required to submit a Consultation Documentation as part of their New Mexico Local Application for IDEA-B Funding. This appears as part of Objective 7 on the application. Representatives of each private school within the LEA's jurisdiction are required to sign and date this form indicating that they have been made aware by the LEA of appropriate provisions contained in the IDEA. There are also requirements in IDEA that specify the process of Consultation, Affirmation, and Compliance, see 34 CFR §§ 300.134, 300.135, 300.136.

10. Can an LEA provide a parentally-placed private school student related services when the student has a disability, but does not require general special education services?

Yes. While the IDEA states that parentally-placed private school children with a disability are not entitled to some or all of the services afforded to public school children with disabilities (34 CFR § 300.137), LEAs have certain responsibilities and certain opportunities to provide services to private school children with disabilities. A child must be identified as having a disability under the IDEA 34 CFR § 300.8 or Subsection (B)(18)(b) of 6.31.2.7 NMAC in order to receive services funded by the IDEA. Each LEA must conduct meetings with representatives of private schools to determine the nature of equitable services to be provided for private school children with disabilities. Once a Services Plan has been developed, the LEA will provide services relative to the child's needs. It is possible, for example, for an LEA to provide speech only related services for a parentally-placed private school student as opposed to requiring an entire curriculum centered on special education services.