



Catholic Conference of Ohio

Q&A DOCUMENT TO ASSIST PARENTS OF SPECIAL NEEDS CHILDREN AND SERVE AS A RESOURCE FOR CATHOLIC SCHOOLS ENROLLING CHILDREN WITH DISABILITIES

1. What is the Individual Disability Education Act?

Answer – In 1975, the federal government began to require states and localities to provide education to students with disabilities. Up until this time, they could be refused education in the public schools. IDEA is unique in federal education law, in that it is both a civil rights law and a federal education program. Under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), Congress continued to require that all children suspected of having a disability be located, identified, and evaluated to determine if they have a disability as defined under IDEA. In the law, Congress emphasized that this requirement includes children attending private school. Although consultation has been required in the past, the reauthorized IDEA is much more specific and has added several new and important details about the consultation process (please see below).

2. How does IDEA serve the interest of all children?

Answer – All children, regardless of the school they attend, have a civil right under IDEA to be evaluated to determine a disability (Child Find).

3. What is Child Find?

Answer -- Through Child Find, each state must locate, identify and evaluate the number of children with disabilities. This includes children placed in Catholic and other private schools by their parents, referred to in the law as “parentally-placed private school children.” Child Find activities must be conducted by the public school districts where private schools are located in order to determine how many children with disabilities are attending those private schools. Under prior provisions of IDEA, the responsibility to conduct Child Find for parentally-placed private school children rested with the public school district in which the children *resided*. Under the reauthorized IDEA, the responsibility rests with the public school district in which *the private school is located*. The district now has responsibility for initial evaluations and reevaluation of any private school children suspected of having a disability, regardless of whether the children’s parents actually reside in that public school district. This is also required if the children’s parents live out of state. The public school district also is responsible for services to the group of parentally-placed private school students. Information on provision of services is provided later in the document. If a student is placed in a private school because the school district cannot provide an appropriate program, then the student is not considered “parentally placed in the private schools” (please see below). Rather, the student is receiving a free and appropriate public school education (FAPE) as the result of a contractual relationship between the district and a private school and as such, the financial obligations for this placement is with the district as the student is entitled to all rights that he or she would have received if enrolled in a public

school. However, if a school district makes available a free appropriate public education and the student's parents or guardian choose to place the child in a private school, the school district is not required to pay for the student's education in the private school.

4. If a parent rejects a free and appropriate public education and opts to place his or her child in a private school, what services can be expected?

Answer -- Parentally-placed private school children with disabilities have no individual entitlement for services. This means that no matter the need or severity of the disability, no child parentally placed in a Catholic and/or other nonpublic school is assured academic services to meet his or her needs. However, IDEA states that all children identified with a disability from the Child Find and evaluative process generate funding for the school district to serve special needs students. A proportional calculation for students parentally placed in private schools must be allocated for one or more of them within a district. The group of parentally placed private school children are entitled to service through a proportional share of federal funds. The proportionate share is the total number of parentally placed private school children with disabilities attending private schools that are located within the school district compared to the total number of children with disabilities within the district. This percentage is then applied to the *federal* funds received by the district; the resulting total is the proportional share of funds available to serve the group of parentally placed private school children.

5. What are other requirements for the district to implement Child Find?

Answer – The Child Find process must be designed to ensure the equitable participation of parentally-placed private school children and an accurate count of those children. The activities performed by the public school district for Child Find must be comparable between public and private school children suspected of having a disability. These activities would generally include and not be limited to widely distributing informational brochures, providing regular public service announcements, staffing exhibits at health fairs and other community activities (including those sponsored by private schools and religious organizations that serve private school children), and creating direct liaisons with private schools. These activities are designed to spread the word about the availability of Child Find in locating, identifying and evaluating children suspected of having a disability.

6. What are the evaluation procedures for parentally placed private school children?

Answer – The evaluation procedures for parentally-placed private school children must be the same as the evaluation procedures for children enrolled in public schools. This is true for reevaluations too. The districts' evaluations and procedures must be technically sound for evaluating children suspected of having a disability. In addition, there are added procedures for determining if a child has a learning disability.

7. Is the private school where the parentally placed child is enrolled responsible for Child Find?

Answer – The public school district where the private school is located is responsible for Child Find. The public school district is responsible for locating, identifying and evaluating *any* child suspected of having a disability, including those in private schools. Parents initiate the process with the public school district with support and assistance from private school personnel. For example, St. Joseph Catholic School is located in one public school district, but has students

who reside in two additional districts. For IDEA, St. Joseph consults with the public school district in which it is located about all of the children at St. Joseph's School, regardless of where the children reside.

8. Are all children suspected of having a disability actually evaluated?

Answer -- If the public school district agrees with the parent that the child may be eligible for special education services, the school district must evaluate the child. The Federal regulations at 34 CFR §300.301(b) allow a parent to request an evaluation at any time. If the school district declines the parent's request for an evaluation, the district must issue a prior written notice as required under 34 CFR §300.503(a)(2) which states, "written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency refuses to initiate or change the identification, evaluation, or educational placement of the child."

9. Can the cost of Child Find and the evaluative process exempt school districts from following through on their requirements within this process?

Answer – The cost of carrying out the Child Find requirements, including individual evaluations, may not be considered in determining if a public school district has met its obligation to provide a proportional share of funds for the group of parentally-placed private school children. Importantly, the Child Find process must be completed in a time period comparable to that for students attending public schools. The "clock" begins when the parents sign permission for the Child Find evaluation; this process cannot be delayed in order to delay the start of the time period. The regulations for IDEA state, "Although there are additional criteria and procedures for evaluating and identifying children suspected of having specific learning disability, the group must also comply with the procedures and timelines that apply to all evaluations, including evaluations for a specific learning disability. Evaluation of children suspected of having a specific learning disability must follow the same procedures and timeframes required in §§300.301 through 300.306, in addition to those in §§300.307 through 300.311." (71 Fed. Reg. at 46659) The initial evaluation is valid for three years and can be re-evaluated at the end of that time line. Note – only those students found to have a disability through Child Find can be eligible for special education and related services.

10. What are related services?

Answer -- Related services are supportive services which are required to assist a child who has been identified as having a documented disability or disabilities through the Child Find process. Such services include speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling and rehabilitation counseling services, and medical services for diagnostic or evaluation purposes. The term also includes transportation, school health services, social work services, and parent counseling and training.

11. What is the definition of a specific learning disability?

Answer – A specific learning disability is defined in IDEA as a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell,

or to do mathematical calculations. It includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. For a child identified as having a learning disability, the difficulties he or she will have performing some, or all, of the tasks listed in IDEA's definition represents more than a "minor problem." Specific learning disability does not include visual, hearing, or motor disabilities; mental retardation, emotional disturbance, or environmental, cultural, or economic disadvantage.

12. What are the named disabilities that qualify a child to receive special education services under IDEA?

Answer – To qualify for this determination, an eligible child is a child with one of the named disabilities *and* who needs special education and related services. For example, a child may have a physical disability, but if the disability doesn't interfere with the child's ability to learn in the classroom, this child would not be eligible for IDEA services. Another example is that a child could be diagnosed with Attention Deficit Disorder (which fits in "other health impairments" under IDEA), but if the ADD is not interfering with the child's ability to achieve in the classroom, no special education services are needed.

The following conditions are considered disabilities under IDEA:

- Mental retardation
- Hearing impairments (including deafness)
- Speech or language impairments
- Visual impairments (including blindness)
- Serious emotional disturbance
- Orthopedic impairments
- Traumatic brain injury
- Other health impairments
- Autism
- Specific learning disabilities

But remember that in order to be eligible for services under IDEA, the child must both exhibit the disability and need special education and related services.

13. What are Individualized Service Plans?

Answer – Parentally placed children in private schools receive an Individualized Service Plan (ISP) if they are chosen to receive IDEA services. The ISP includes all of the services funded by IDEA, which may or may not be all of the services recommended in the Child Find evaluation results. It also does not include any interventions, accommodations, or services provided by the private school. The major difference between an ISP and an IEP is that an IEP contains *all* services required to fulfill the offer of FAPE. The ISP, on the other hand, lists *only* those services that are actually being provided. For example, if a child is found to have a specific

learning disability and a speech/language deficit, the ISP offer of services may only be for speech therapy. While the child would clearly benefit from a classroom aide for his or her specific learning disability, this is not offered in this example because funds were not available. The ISP in this example would only list the speech therapy and would not make mention of the need for a classroom aide since the aide would not be provided by IDEA funds.

14. Should services for parentally-placed private school children with disabilities be provided directly?

Answer -- Services to parentally-placed private school children with disabilities should be provided directly to them, unless there is a compelling reason not to do so. In this context, “direct services” means services provided directly to students by a professional, not indirectly by providing a workshop for the child’s classroom teacher. Both direct and indirect services are allowed, and some circumstances and disabilities may favor one over the other. However, a preference must be given to providing services directly to students.

15. What is the meaning of “least restrictive environment”?

Answer -- To the maximum extent appropriate, children with disabilities should be educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Least restrictive environment is not mandated upon Catholic and other private schools for them to do so. However, many Catholic schools in Ohio and across the national are embracing an inclusive model in which special needs students, whenever possible, are educated in the same environment as their non-disabled peers.

16. Must the public school district provide special education services at the location of the child’s private school?

Answer -- The location of services must be discussed in consultation. The law states that preference should be given to providing services on site at the private school. This is a required topic of discussion during the consultation process. With the change in IDEA 2004 that makes the school district where the private school is located responsible for Child Find, it is now easier for services to be provided on site at the private school because grouping of children for services is easier and more practical. Additionally, since preference must be given to providing services directly to students with disabilities, districts will find that these are most easily delivered at the private school.

17. Can private school students receive services from a third party provider?

Answer -- Third party providers are an option for providing IDEA services to parentally-placed private school children with disabilities. Public school districts can contract with a third party to conduct Child Find activities and provide special education and related services. The third party must be independent of any private school or religious organization. The option of a third party providing services must be part of the consultation process. The law states that the private school official must be given a genuine opportunity to express his or her views on the use of a third party. This is a significant new right that private school representatives have under IDEA.

18. Do all proportional funds for children parentally placed in private schools have to be used within the same school year?

Answer -- The proportional share of funds must be used to serve the group of parentally-placed private school students. If the funds are not used within the current school year, they must be carried over to the private school program for the following year. Decisions about the use of funds are made during timely and meaningful consultation, discussed later in this document.

19. Are funds from the American Recovery and Reinvestment Act (ARRA) provided to students parentally-placed in private schools?

Answer -- This funding must be shared with the group of parentally-placed private school children with disabilities, just as regular IDEA funding must be proportionally shared. The overall goal is to stimulate the economy in the short-term and invest wisely, using these funds to improve schools, raise achievement, drive reforms and produce better results for children and young people for the long-term health of our nation.

20. What is consultation and why is it required?

Answer -- Consultation is required between the public school district and representatives of private school students and parents of private school students. Consultation is a required, ongoing process of communication, between private school representatives and public school special education officials. It is conducted on a specific list of topics.

The “private school representative” can be the school principal, a diocesan government programs director, and other school leaders. Especially for IDEA, it is appropriate to include a classroom or resource room teacher in the consultation.

The law calls for consultation with representatives of private school students. Some districts interpret this to mean with each private school, while others consult only with a select group of private school officials. However, consultation must be an open process and any stakeholder should be permitted to be a part of the consultation process.

Another consultation issue occurs if the public school district surveys the needs of all of the schools and chooses the service that most schools need for their parentally-placed private school students. This usually leads to only an offer of speech and language therapy, since that seems to be the most common disability in private schools. However, consultation requires that the process ensure that the views of private school officials are considered and that all disability types are considered for services. This is often accomplished by the private school principal getting feedback from these parents prior to the consultation meeting with private school officials.

The law states that consultation must be timely and meaningful and it must begin before decisions are made. The Child Find process and access to it must be discussed and the funds available for services must be disclosed along with how this proportional share was determined.

Consultation should provide an opportunity to plan future meetings—the process is ongoing, not a once-a-year meeting. A discussion should take place about how, where, and by whom

services will be provided, ensuring views of private school officials are considered. The law states that preference be given to onsite services and must ensure preference is given to providing direct services to children. The consultation process must include a discussion of the option of a third party provider and must ensure that private school officials have a genuine opportunity to express their views on this topic.

While the final decision rests with the public school district, there are safeguards to ensure the results of the consultation process are fair and equitable, including a written explanation by the public school district to the private school officials if a request for third party is not honored. The district must provide a written analysis of its reasons for not providing services through a third party when requested by the private school representative. There is also a requirement that the public school district obtain a written assurance (sign-off) by the private school representatives that consultation requirements were met and an equitable program was designed. A private school official should not sign off until the consultation has been conducted in a timely and meaningful way, appropriate topics were discussed, the views of private school officials have been heard, and there is a reasonable expectation that an equitable program has been designed. Therefore, it is not appropriate for public school officials to ask the private school representatives to “sign off” as they “sign in” to a meeting. Keep in mind that consultation should be ongoing and the sign off should occur only once an equitable program has been designed and implemented. If the private school official does not sign off, the district must provide the state education agency with a description of the consultation process and the reason the private school representatives did not sign off on the written assurance.

21. What is the complaint procedure?

Answer -- A complaint procedure is in place in IDEA. It is initially a formal complaint to the state education agency. If the private school is not satisfied with the state’s resolution of the complaint, the law permits an appeal to the U.S. Secretary of Education.

22. What is the role of the private school principal?

Answer -- Private school principals can assist with the planning and delivery of special education and related services under IDEA. The law does not place any requirement on private schools or their leadership. A key activity for private school principals is to ensure your teachers are aware of the signs of a possible disability, effective classroom interventions, and the Child Find process.

23. What safeguards exist for private school officials to ensure their children with disabilities are receiving equitable services?

Answer -- IDEA requires every public school district to obtain a written assurance from each private school official that indicates that the requirements for consultation have been met and that the program developed has a reasonable expectation of providing equitable services to the group of parentally placed private school student with disabilities. If a written assurance cannot be obtained, the LEA must provide a written description of the consultation process to the State educational agency (SEA).

Secondly, if the private school official is not satisfied that a program has been designed during consultation that will provide equitable services to the group of parentally placed private school

children with disabilities, he or she may file a complaint with the SEA. If the private school official does not receive a timely response or is not satisfied that the response solves the complaint issue, he or she may appeal to the U.S. Secretary of Education. The Secretary has the authority to grant a bypass if it is determined that the SEA is unable or unwilling to provide equitable services. Under a bypass, the U.S. Department of Education contracts for services to be provided to the group of private school students with disabilities, bypassing the SEA.

24. Is IDEA the only federal law that is applicable to the rights and requirements for children with disabilities?

Answer – No. Section 504 of the Rehabilitation Act of 1973 is a federal law that protects qualified individuals from discrimination based on their disability.

What is Section 504? It prohibits discrimination against individuals who meet the definition of *disability* in the act, and it is applied to entities that receive federal funding. Schools must afford students with disabilities with equal opportunities "to obtain the same result, to gain the same benefit, or to reach the same level of achievement" as students without disabilities. Section 504 applies only to entities that receive federal funds. In general, private elementary and secondary schools do not receive funds from the U.S. Department of Education, though many of them receive federally titled services. Private schools receiving services from federal program are not obligated to comply with Section 504. However, there are some grants that private schools may be eligible to apply for directly. In these instances, the number of private elementary and secondary schools applying for such grants is very minimal. In the event that a private school has applied for and received a Department of Education grant and, thus, is a recipient of federal financial assistance, it will have obligations under 504 of the Rehabilitation Act. In addition to federal grants, private schools are obligated to comply with some provisions (please see below) of 504 when receiving federal funds from anti-drug programs, programs designed for at-risk students, educational reform programs, programs designed to enable students to meet national education goals, technology grants, government contracts, and government loans.

In addition, 504 applies when private schools receive federal funding indirectly. For example, if the federal government provides a grant to a non-profit entity organized to promote education, student health, or a similar purpose and the entity redirects a portion of the funding to a private school, then said school is a "recipient of federal funds" (*Dupre v. The Roman Catholic School of the Diocese of Houma-Thibodeaux*).

Section 504 prohibits entities receiving federal funds from discriminating against students because of his or her disability. Section 504 requires that private schools receiving federal funds to provide "minor adjustments" to assist students with disabilities.

Section 504 can obligate private schools to enroll students with disabilities, but only if the student is qualified to participate in the school program, with or without minor adjustments. Section 504 does not require a private school to modify its essential enrollment criteria. If, however, the student could meet the program criteria with minor adjustments, the private school must make such adjustments. For example, if a student, because of his or her disability, needs additional time to complete a school entrance exam, this accommodation should be provided.

Like Section 504, the American with Disabilities Act is civil rights legislation for individuals with disabilities. The language of 504 that is applicable to private schools differs from that used in the Americans With Disabilities Act. Unlike 504, ADA applies to almost every entity in the United States, regardless of whether it receives federal funds; churches and private clubs are the only two entities that are exempt from the ADA. Therefore, private schools that are not associated with a religious organization have to comply with the provisions of the ADA and in doing so, are required to make major adjustment to accommodate students with disabilities, not merely minor modifications.

25. Where can I find more information about IDEA services to parentally-placed private school students?

National Catholic Educational Association (NCEA)

<http://www.ncea.org/public/IDEASpecialEducation.asp>

Council for American Private Education (CAPE): <http://www.capenet.org/IDEA.html>

Office of Non-Public Education (ED):

<http://www.rrfcnetwork.org/images/stories/FRC/IDEA/idea.pdf>

Office of Non-Public Education

www.ed.gov/policy/speced/guid/idea;idea2004.html

Office of Special Education Programs, U.S. Department of Education

<http://www.ed.gov/about/offices/list/osers/index.html?src=oc>

Education Department's IDEA site: <http://idea.ed.gov/explore/home>

Education Department's Recovery site: www.ed.gov/recovery

Education Department's Training module for serving parentally-placed private school children:

http://www.nichcy.org/Laws/IDEA/Documents/Training_Curriculum/16-trainerguide.pdf