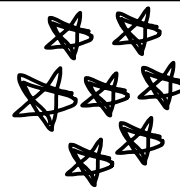


Children in Private Schools: What are a School District's Obligations?



Presented by:

PAULA MADDUX ROALSON

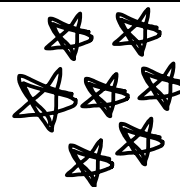
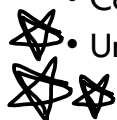
Houston Office

WALSH GALLEGOS
KYLE ROBINSON & ROALSON P.C.

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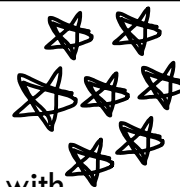
An Overview of Issues:

- What is a Private School? Who is a Private School-er?
- Child Find
- Consultation Process
- Calculating Proportionate Share
- Evaluation and Confidentiality Issues
- FAPE
- Developing and Implementing Proportionate Share Services Plans
- Dual Enrollment
- Complaints
- Unexpected Closures



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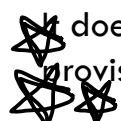
Who are private school-ers under federal law?



The IDEA calls such students “parentally-placed private school children with disabilities” and they include:

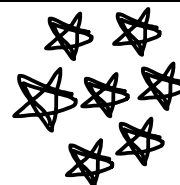
Children with disabilities who are enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school or secondary school

- Elementary School - a nonprofit institutional day or residential school ... that provides elementary education, as determined under State law.
- Secondary School - a nonprofit institutional day or residential school ... that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

 does not include student placed in such facilities by the school district as a provision of FAPE. 34 C.F.R. 300.130

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Why is this distinction important for public schools?



No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school . . . The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

 34 C.F.R. 300.137



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Texas Law and Preschoolers:

- Texas law expands upon what is a private school by considering pre-schools and home schools a private school for child find purposes.
- A day care is not considered a private school in Texas.
 - The Texas Legislature previously included day cares within the definition of a private school, but the Legislature removed it before passing the law codifying a District's duties to parentally placed private school students.



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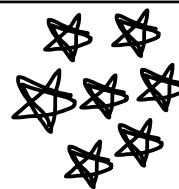
What about Home Schools?

Under Texas law, a home school meets the definition of a “private school” if:

it provides elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of student progress.



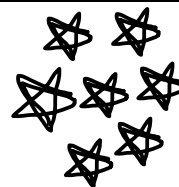
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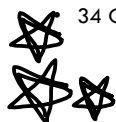
CHILD FIND



District's Obligation



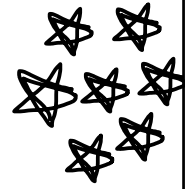
- Each district has a duty to locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district.



34 CFR 300.131



Goal of Child Find as to Private Schools



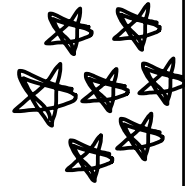
- The child find process must be designed to ensure:
 - Equitable participation of parentally-placed private school children; and
 - An accurate count of those children.



34 CFR 300.131

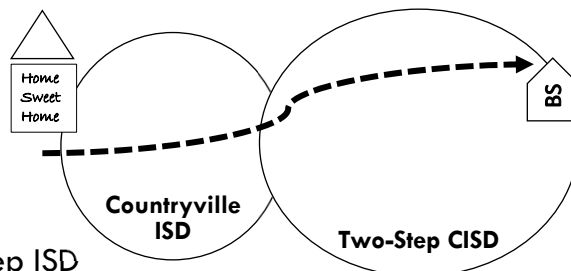
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Pop Quiz!



Willie lives in Countryville ISD, but every morning, he “gets On the Road Again” and travels to Bootscoot School (“BS”), a private school located in the neighboring Two-Step CISD. BS suspects that Willie might be a student with a disability. Who is responsible for conducting the initial special education evaluation? How do you know?

- A) Countryville ISD
- B) Two-Step CISD
- C) Bootscoot School
- D) Countryville ISD and Two-Step ISD

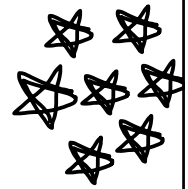


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Pop Quiz!

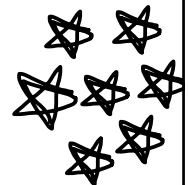
- A) ~~Countryville ISD~~
- B) ~~Two-Step CISD~~
- C) ~~Bootscoot School~~
- D) **Both Countryville and Two-Step**

Countryville ISD is Willie's home (resident) school district and thus owes a child find obligation to him. Countryville also is responsible for affording Willie with FAPE. Two-Step CISD is the District in which the private school is located and owes a child find obligation to Willie.

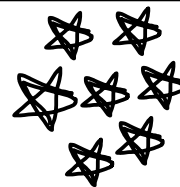


Who is responsible for equitable (“proportionate share”) services for Willie?

Under the IDEA the District where the private school is located is responsible for providing for the equitable participation of parentally placed school children with disabilities. Here, that is Two-Step CISD. They are required to provide “proportionate share services” to Willie upon request.



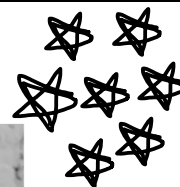
Determining the number of children with disabilities parentally-placed in and attending private schools



- Conduct a thorough and complete Child Find Process.
- Timely and meaningfully consult with representatives of private schools located within your district.



Child Find Process

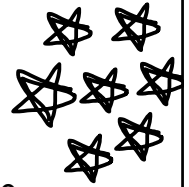


- A district should implement similar child find procedures for child find in a private school as they implement in their public schools.
 - The method and time period for conducting child find for private school children should be comparable to the method and time period for conducting child find efforts for public school children.



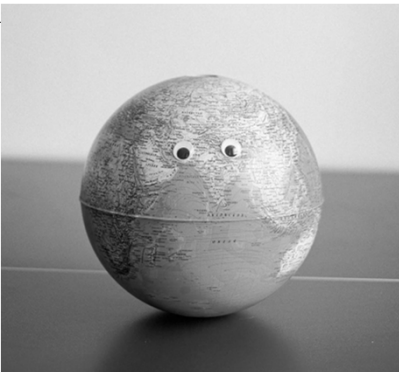
How should Districts reach out to private schools?

- Districts should follow methods and procedures similar to how they communicate child find to their public school students.
- However, some different techniques may be needed to communicate child find to private school students and their families.
- OSEP recommends:
 - Holding professional development sessions for private school teachers on IDEA's evaluation and re-evaluation requirements;
 - Posting flyers in private school facilities to inform stakeholders of the availability of child find; and
 - Facilitating round table discussions with community members.

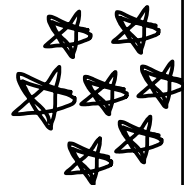


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What if Mom and Dad live outside of the country?

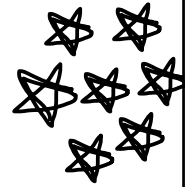


Neither the IDEA nor its implementing regulations distinguish between parentally-placed private school children with disabilities whose parents reside in other countries and those whose parents reside in the United States ... if international students with disabilities are enrolled in private elementary schools or secondary schools the LEAs where the private schools those children attend are located must consider them for equitable services in accordance with the requirements in the IDEA. *Letter to Corwell*, 61 IDELR 82 (OSEP 2013).



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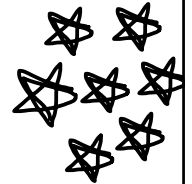
Child Find Procedures



- The cost of carrying out child find requirements, including individual evaluations, may not be considered in determining if a district has met its child find obligation.
- The timeline for when public school children must have their FIE completed after the district receives parental consent also applies to private school children.



Pasadena Unified School District, 115 LRP 47542
(SEA CA 09/04/15)



You can lead a horse to water ...

- On several occasions over a three-year period, a school district contacted the private school in its boundaries where a teenager with Marfan Syndrome had been enrolled by the student's parent. The school district provided contact information for referral of students in need of special education evaluation or services and information on classes/seminars to which the private school staff was invited.
- No response from the private school.
- The parent subsequently challenged the school district, alleging a failure to fulfill child find requirements.



Who wins the case?

- The evidence demonstrated that the district had an effective child find program that disseminated information into its communities, including sponsoring classes and seminars to which the public was invited. Additionally, the district twice contacted every private school within its boundaries at the beginning of each school year.
- The administrative law judge concluded that the district could not force the private school to consult with it about its students who might be in need of special education support. School district wins. In other words, you can't make 'em drink.



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A.B. v. Abington Sch. Dist., 78 IDELR 1 (3d Cir. 2021, unpublished).

- Student with ASD was enrolled in a public school district from the 1st- 4th grade. The parent placed the student in private school for 5th grade. The home school district sent an RWA letter.
- Over the next two years, the parents occasionally made general inquiries about "programs the District could offer." The school district did not offer to evaluate the student, even when the parent inquired about special education services available at one of the district's junior high schools.
- The 3rd Circuit held that the parent's general inquiries failed to put the district on notice that she was requesting an offer of FAPE. Parents "never manifested a desire to re-enroll."
- Two points: (1) Don't try this at home, and (2) Do you know what an RWA letter is?

What is
an
RWA
Letter?


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RWA Letters

Dear Parent,

I understand that you have elected to place your child in a private school this school year. We are hopeful that this decision was not the result of dissatisfaction with your child's program in our school district. Please know that we are ready, willing and able to provide your child with a free appropriate public education in the least restrictive environment, and I invite you to contact me to schedule a meeting of your student's ARD committee to address your child's special education program.

Sincerely,

 Director of Special Education

What is
an RWA
Letter?

***Seek legal counsel if you need attorney advice/guidance on a specific situation or on any additional needed elements of an RWA letter.*

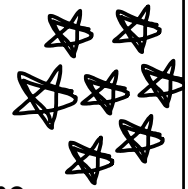
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Houston Indep. Sch. Dist., 118 LRP 10358 (SEA TX 10/24/17).

- Student qualified for ECI vision services.
- The District developed an IEP after a functional vision evaluation determined eligibility as a student with a vision impairment.
- The parents moved the student to private school within the HISD district's boundaries, and in October 2016, requested an evaluation from HISD. The district completed an evaluation and recommended eligibility as a student with a visual impairment.
- The parents requested an IEE. HISD granted this request and provided for an independent evaluation of the student. HISD also gave written notice to the parent that its legal obligations were completed because the student was attending private school.

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Houston Indep. Sch. Dist., 118 LRP 10358 (SEA TX 10/24/17).

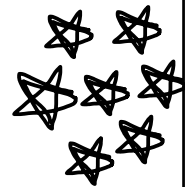


- The parents alleged that the district failed to identify and evaluate the student consistent with its child find obligations since the student's placement into private school, and that the parents were entitled to reimbursement for costs of the private school placements.
- The hearing officer found that the district met its child find obligations and proportionate share services requirements. The district is only required to identify eligible students and to develop a service plan. Since the district provided and IEE and developed a service plan, the hearing officer found that HISD met its obligation under the child find provision of the IDEA. School wins.



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Heather B. v. Houston Independent School District



- The District had information showing that the parents planned to continue student's enrollment in an out of district private school and thus, did not err by waiting to evaluate the student until her parents renewed their request for IDEA services.
- Parents who enrolled a 10-year-old girl with a visual impairment in an out-of-district private school could not show that their home district or the district in which the school was located unreasonably delayed in evaluating their daughter's need for IDEA services.



Heather B., Next Friend of S.S. v. Houston Indep. Sch. Dist., No. 21-20229, 2022 WL 4299727 (5th Cir. Sept. 19, 2022), cert. denied sub nom. Heather Next Friend of S. S. v. Houston Indep. Sch. Dist., 143 S. Ct. 1004, 215 L. Ed. 2d 139 (2023)

WG

A.B. v. Abington School District

- Parent made general inquiries into programs available to their child, and then claimed more than a year later that the District “has [not] offered an appropriate program and placement for [A.B.] ... leaving us with no other option but to continue [A.B.’s] enrollment at [AFS] for the 2018-2019 school year” and requesting that “the school district fund the tuition.”
- The parent’s statements and inquiries did not reflect an intent to re-enroll A.B. or constitute a request for an evaluation.
- The Court held that parent’s statements inquiring about programs available to student were insufficient to trigger district’s responsibilities under IDEA and that reimbursement was not owed to parent.

A.B. through Katina B. v. Abington Sch. Dist., 841 F. App’x 392 (3d Cir. 2021)

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CONSULTATION PROCESS

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The Consultation Process



- LEAs are required to consult with both private school representatives and parent representatives of parentally placed private school children with disabilities during the design and development of special education and related services.
- The consultation process should occur throughout the school year so that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services as determined as a result of the consultation process.

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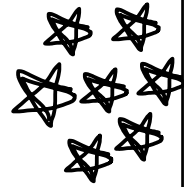
The Consultation Process

- The District should consult with the parents and private school representatives regarding:
 - How private children suspected of having a disability can participate equitably;
 - How parents, teachers, and private school representatives will be informed of the process;
 - The determination of a proportionate share of federal funds;

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The Consultation Process – Continued

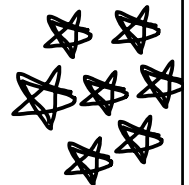
- How the process will operate throughout the school year to ensure meaningful participation of these children in special education and related services;
- How, where, and by whom special education and related services will be provided including a discussion of:
 - The types of services, including direct services and alternative service delivery mechanisms;
 - How special education and related services will be apportioned if funds are insufficient to all parentally placed private-school children with disabilities; and
 - How and when these decisions will be made.



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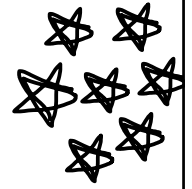
The Consultation Process – Continued

- Finally, consultation should include a discussion of how the district will provide a written explanation to the private school representatives if the district disagrees with the private school officials on the provision of services or the types of services.



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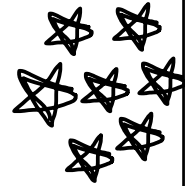
Reporting to the Texas Education Agency



- The LEA must maintain in its records and provide to the Texas Education Agency (TEA) the following information related to children with disabilities parentally-placed in private schools:
 - The number of children evaluated;
 - The number determined to be children with disabilities; and
 - The number of children served.



Written Affirmation



- Consultation must be both timely and meaningful and occur during the design and development of special education and related services for parentally placed children with disabilities to access benefits from IDEA.
- When timely and meaningful consultation has occurred, the district must obtain a written affirmation signed by the representative(s) of the participating private schools, OR
- If the private school representatives do not provide a written affirmation within a reasonable period of time, the district must forward the documentation of the consultation process to TEA.



Baltimore City Public Schools (Maryland SEA 2022)

- Districts are required to consult with private school representatives when they develop IEPs for parentally placed private school students. That means that they must regularly meet, address specific required topics, work together to develop educational programming, involve parents, and agree upon services.
- This district documented its efforts to schedule and convene regular meetings.
- The state ED received a complaint on behalf of parentally placed private school students alleging that the district failed to timely and meaningfully consult with private school representatives during the design and development of special education and related services for students.
- The district's presentation to representatives and parents addressed child find activities, the evaluation process, the IEP processes, service plans, equitable participation, services offered, calculation of the proportionate share, and funding available and parents were given the opportunity to provide written affirmation that they participated meaningfully in the process.

The State ED concluded the district satisfied the IDEA.

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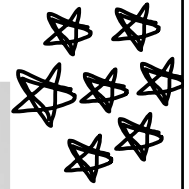
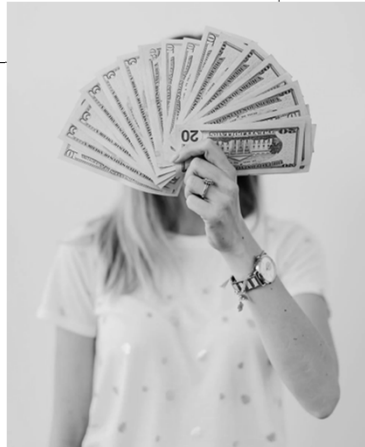
CALCULATING PROPORTIONATE SHARE

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What is proportionate share?

- The amount of federal IDEA funds to be expended on parentally placed private school children with disabilities in a school district that is based on the total number of children with disabilities who are enrolled in private elementary and secondary schools, including religious schools, located in the district, whether or not the children or parents reside in the district.

- 34 CFR 300.132 and 300.133(a)



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How can a district ensure an accurate count?

- An accurate count can be ensured by a thorough consultation process that ensures equitable participation.
- A district should implement similar child find procedures for child find in a private school as they implement in their public schools.
- A district must include students that live outside of the district or whose parents live outside of the United States if those children are enrolled in private schools located within the district. *Letter to Corwell*, 61 IDELR 82 (OSEP 2013).



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Who is considered in this calculation?

- All eligible parentally placed children with disabilities ages 3 through 21 attending private schools located in the district.
 - This includes children whose parents did not consent to services, but it does not include children whose parents did not consent to evaluation.



Other considerations regarding calculation



- The cost of transportation may be included in calculating whether the district has met the expenditure requirements of the proportionate share.
- In addition to the previous formula, districts must also expend a proportionate share of their sub grant under section 619 (g) of IDEA for parentally placed children with disabilities aged 3 through 5 who are enrolled by their parents in private schools that meet the definition of “elementary school” in the final Part B regulations. This amount is calculated relative to the number of eligible parentally placed private school children aged 3 through 5 with disabilities compared to the total number of eligible children with disabilities in its jurisdiction age 3 through 5.



Other considerations regarding calculation



- Other federal funds, including reimbursement, that a district receives from a federal funding source, cannot be used to offset the proportionate share amount that the district must spend.
- A district with significant disproportionality under IDEA cannot subtract expenses related to providing comprehensive coordinated early intervening services before the district calculates the proportionate share for private school students.
- A district cannot include administrative costs to meet the requirement to spend a proportionate share of IDEA funds.

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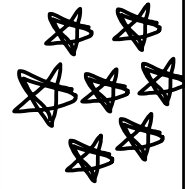
Important!

- A district cannot directly make payments to a private school for funds that are required to be expended on equitable services.
- A public agency must control and administer the funds used to provide special education and related services to parentally-placed private school children with disabilities. 34 CFR 300.144(a)
- A district cannot use IDEA funds to finance the existing level of instruction in a private school, and such funds may not be used for meeting the needs of a private school or the general needs of the students enrolled in the private school. 34 CFR 300.141

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What about For-Profit Private School Children?

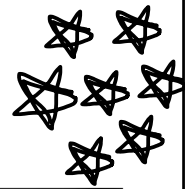
- Children attending for-profit private schools are not eligible for equitable services, but they must still be identified, located, and evaluated for general child find purposes under 34 CFR 300.111



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Expenditures and Allowable Use of Funds

- State and local funds should be used to supplement, not supplant, the proportionate share of federal funds. 34 CFR 300.133(d)
- Funds cannot be used to benefit a private school. 34 CFR 300.141
- Funds for equitable participation must remain in control of the public agency. 34 CFR 300.144(a).
- Costs associated towards child find obligations (FIE, re-evaluations, etc.) exist independently from the requirement for districts to expend a proportionate share of federal IDEA funds to provide equitable services to eligible parentally placed children with disabilities.



IDEA funds cannot be used for repairs, minor remodeling, or construction of private school facilities.

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Property, Equipment, and Supplies



- A district may place equipment and supplies for equitable services in a private school, but only for the period of time needed to meet the equitable participation requirements.
- The district must ensure that equipment and supplies placed in a private school are used only for IDEA Part B purposes and can be removed from the private school without remodeling the private school facility.
- The district must remove equipment and supplies that are no longer needed for IDEA purposes, or, if removal is necessary, to avoid unauthorized use of the equipment and supplies for other than IDEA purposes. See 34 CFR 300.144(b)-(d)

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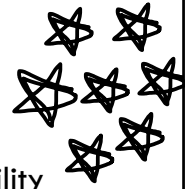
What to do with extra money?

- What happens if a district has not spent all of the money allotted for equitable services by the end of the fiscal year for which Congress appropriated the funds?
- Then the district 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 of one additional year. 34 CFR 300.133(a)(3)
- Try not to have leftover funds if at all possible because the extra money could serve as evidence that parentally placed private school children did not receive a proportionate share (unless all children in the district had leftover funds)!



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Pop Quiz!

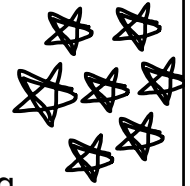


- Susie Q. attends Hawkins Private Academy. Susie is a student with a disability and her equitable services include consultation services between her private school teacher and an occupational therapist. Susie's teacher ends up implementing the new skills she learns when interacting with any student in the class, not only Susie. What should the district do?
- Stop all OT consults with that specific teacher
- Refuse to count students in that private school for purposes of proportionate share
- Nothing



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Pop Quiz!

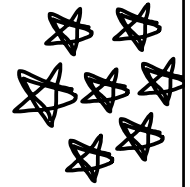


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- ~~Stop all OT consults with that specific teacher~~
- ~~Refuse to count students in that private school for purposes of proportionate share~~

 **Nothing**

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Why?

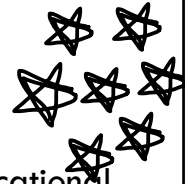


- OSEP advises that it is alright if other students in a private school derive an incidental benefit from the special education and related services provided to parentally-placed private school children with disabilities designated to receive services under IDEA.
- OSEP has used the previous question as an example of a permissible incidental benefit.
- However, in providing or arranging for the provision of equitable services, districts should use reasonable measures in assessing whether IDEA funds are being used to benefit private schools.



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Board of Educ. of the Appoquinimink Sch. Dist. v. Johnson, 50 IDELR 33 (D. Del. 2008).

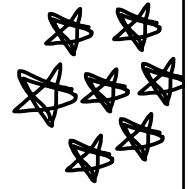


- The student attended the School for the Deaf. Each year, an educational team, in consultation with the student's teachers and parents, developed an IEP tailored to meet the student's educational needs.
- During his fifth-grade year, Parents expressed concern about their son's continued placement at DSD, due to his below grade level performances on certain examinations. They requested that their son be placed at a non-profit private school (St. Anne's) with the assistance of an American Sign Language interpreter. The District responded that it would only provide an ASL interpreter for the student if he was enrolled in a public school in the District.



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The Due Process Hearing



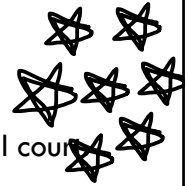
- Parents requested a DPH and argued-
 - The most recent IEP required small class sizes at or above his academic ability and that the public school could not satisfy this requirement.
 - St. Anne's could meet the student's IEP requirements, but the public school district should provide an ASL interpreter because the District acknowledged its obligation to provide the student with an interpreter if he attended a public school within the District.
- Hearing Officer found that the District complied with the IDEA by affording the student with a FAPE, and therefore, the District had no obligation to fund the student's private placement at St. Anne's.
- *But the Hearing Officer also said the school should provide the sign language interpreter.*

Whaaaaa?



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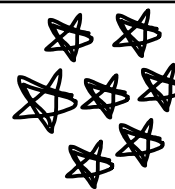
The Appeal into Federal Court



- District appealed the Hearing Officer's DPH decision into federal court.
- The court stated the law that parentally placed private school students with disabilities are not entitled to the full range of IDEA services that they would receive in a public program. Instead, a district only needs to ensure that it spends a proportionate share of its Part B funds on parentally placed private school students.
- Here, the district showed that the student's proportionate share of Part B funds allocated for private school services was \$3,693. But a full time ASL interpreter would cost \$37,000 -- more than 10 times the amount allotted. "This fact alone demonstrates the inequity that would arise with respect to the other parentally placed private school students if the district were required to fund a one-to-one ASL interpreter for the student," per the Court.
- School district wins.



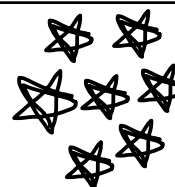
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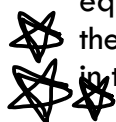
EVALUATION AND CONFIDENTIALITY ISSUES



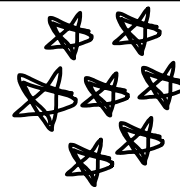
Issues regarding Parent Consent for Evaluations



- Unlike public school students, if a parent of a parentally placed private school student refuses to give consent for an evaluation to determine the child's eligibility under IDEA, the district may not use its consent override procedures.
- This causes the child to not be included in the annual count of the number of parentally placed private school children with disabilities since eligibility was unable to be determined.
- In contrast, if the district evaluates a parentally placed child and determines the child is eligible under IDEA, but the parent refuses the provision of equitable services under a services plan, the district must include this child in the count of eligible parentally placed private school children with disabilities in that district.



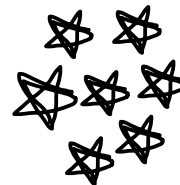
Letter to Eig, 52 IDELR 136 (OSEP 2009)



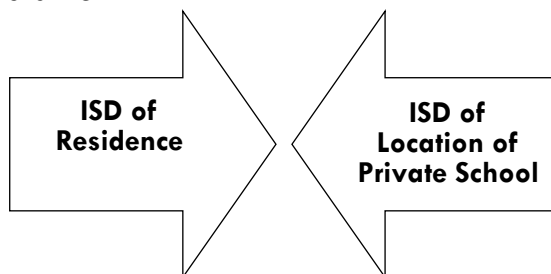
- While the district in which the private school is located is responsible for identifying a student in need of equitable services, the home district must evaluate the student for IDEA eligibility upon the parent's request.
- IDEA requires districts to ensure that all resident children with disabilities, including children who attend private schools, are identified, located, and evaluated.



Upland Unified Sch. Dist., 112 LRP 57989 (SEA CA 11/01/12)



- If parents request an assessment from the district of residence, rather than the district in which the private school is located, the district of residence may not refuse to conduct the assessment and determine the child's eligibility for FAPE because the child attends a private school in another school district.



Dueling Evaluations

- While it is possible for a parent to request an evaluation from both the home district and the private school district, OSEP does not recommend this because it could lead to confusion, duplicative testing, or too many tests in a short period of time.
- Practice pointer: ask the parent to provide you with consent to speak with the other school district.



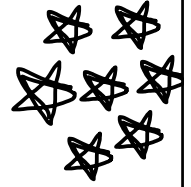
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When is a re-evaluation necessary?

- OSEP has proposed that the district in which the private school is located is responsible for conducting re-evaluations of parentally placed private school students. A re-evaluation should be conducted:
 - If the district determines that the child's educational or related service needs, in light of the child's academic achievement and functional performance, warrant a re-evaluation
 - The child's parent or teacher requests a re-evaluation
 - No more frequently than once a year and no less than once every three years unless the parent and district agree otherwise.

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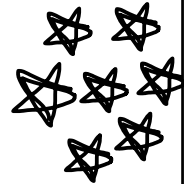
Confidentiality



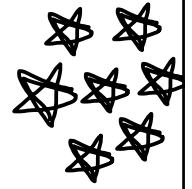
- Parental consent must be obtained before any information regarding a parentally placed private school child is shared between districts.
- It is important for the district to make sure that parents and private school officials are both informed of this rule.
- If a student transfers from a private school located in District A to a private school located in District B, District A cannot contact District B to send over educational records without the parent's consent.
- Remember the practice pointer: ask the parent to provide you with consent to speak with the other school district.



FAPE



Types of Students Enrolled in Private School

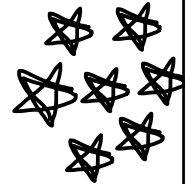


- Public school students whose ARDC found that the private school is the LRE for the student and a private school was necessary to provide FAPE; and
- Students whose parents unilaterally placed the student in a private school.
 - Where FAPE is being contested or
 - Where FAPE is not being contested

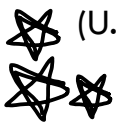


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Why is this distinction important?

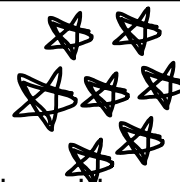


- The district's obligations to parentally placed private school children with disabilities are different from its responsibilities to those enrolled in public schools or to children with disabilities placed in a private school by a public agency as a means of providing FAPE.
- Parentally placed children with disabilities do not have an individual entitlement to services they would receive if they were enrolled in a public school.
- Instead, the district is required to spend a proportionate amount of IDEA federal funds to provide equitable services to this group of children.

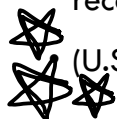


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Services Plans for Unilaterally Placed Students



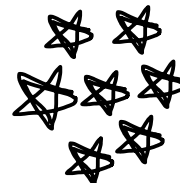
- The amount and type of services will differ from the services the child would receive in a public school or if a public school placed them in that private school.
- LEAs are required to consult with private school representatives and representatives of parents of parentally placed children with disabilities during the design and development of special education and related services for these children.
- Since the district only has to spend a proportionate share on parentally placed private school children, it is possible that some parentally placed children will not receive any services while others will.



(U.S. Department of Education, 2011)





The School District of Residence – Where to Begin?



- A district of residence must convene an ARDC meeting to determine whether the district can offer an eligible student FAPE when a private school refers a student to the District.
- The district should develop an IEP based on current evaluation data. FAPE should be offered.
- If the district can provide a FAPE, the district is not required to implement the IEP until the parents enroll the student in public school full time.



Letter to Wayne, 73 IDELR 263 (OSEP 2019)

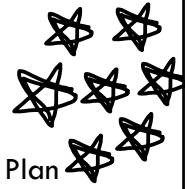
- What if parents decline services, do we have to make an offer of FAPE every year?
- "If a determination is made through IDEA's child find process that a child needs special education and related services and a parent makes clear his or her intent to keep the child enrolled in the private school, the LEA where the child's parent resides, is not required to make FAPE available to the child"
- On the other hand, OSEP stated, the duty to offer FAPE and develop an IEP ould kick in once the parent decides to return the child to public school. 20  USC 1412(a)(1); 20 USC 1413(a)(1).

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DEVELOPING AND IMPLEMENTING PROPORTIONATE SHARE SERVICES PLANS

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How do we implement services for parentally placed private school students?

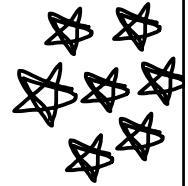


- Parentally placed private school students will have an Independent Service Plan (ISP) instead of an IEP. This is because they are only given access to certain services instead of having an education plan that is individually tailored to their needs.
- Services Plans contain a written statement that describes the special education and related services the District will provide to a child with a disability, who is parentally-placed in a private school, and who has been designated to receive services, including the location of the services and any transportation necessary.

 Note: while IEPs can be changed without a formal team meeting, 34 CFR 300.324(a)(4), there is no corresponding provision for ISPs

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District Has Final Say



Services plans for students whose parents decline an IEP require that the school:

- Initiate and conduct a services plan meeting to develop, review and revise a services plan for the child that describes the specific special education and related services that the child will receive in light of the services the District determined it would make available to children with disabilities parentally-placed in private schools.
- Ensure that a representative from the private school attends the meeting.
- Use other methods to ensure the participation by the private school, including individual or conference telephone calls if the representative cannot attend.



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Provision of Services

- Each parentally placed private school child with a disability who has been designated to receive special education and/or related services must have a services plan.
- The services plan describes the specific special education and/or related services that the district will provide to the child.
- Districts may provide the services directly to the student through District employees or by a contract with a third party.
- The district must ensure that a representative of the private school attends each meeting to develop the services plan.



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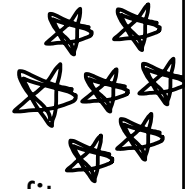
Provision of Services - continued

- Services may be provided on-site or off-site as deemed appropriate by the district.
- The District may use funds to make public school personnel available in other than public facilities:
 - To the extent necessary to provide services for children with disabilities parentally-placed in private schools; and
 - If those services are not normally provided by the private school.



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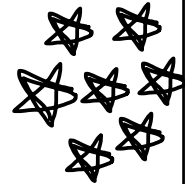
Transportation



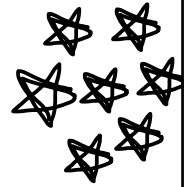
- If transportation is necessary for a parentally placed child to benefit from or participate in the services provided under the services plan, the district must provide transportation:
 - From the school or the home to a site other than the private school; and
 - From the service site to the private school or to the child's home (depending on the timing of services.)
- Districts are not required to provide transportation from the child's home to the private school.



COMPLAINTS



Private School Complaint Process

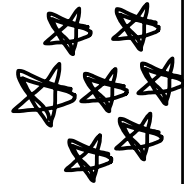


- If private school officials believe that consultation has not occurred in a timely and meaningful manner or that the district has not given due consideration to their views, they have the right to submit a complaint to TEA.
- To submit a complaint, the officials must provide to the TEA the basis of non-compliance by the district and include the applicable provisions in the regulation, and the district must forward the appropriate documentation to TEA.
- If the private school officials are dissatisfied with the decision of TEA, they may submit a complaint to the U.S. Secretary of Education, and the TEA must forward appropriate documentation to the secretary.



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Parent Complaint Process



- Under the IDEA, parents have the right to file due process complaints only regarding child find – those complaints are brought against the school district in which the private school is located.
- Parents also can file State complaints regarding equitable participation requirements. 34 CFR 300.140
- In Texas, complaints regarding equitable participation requirements are filed with the TEA.



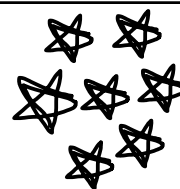
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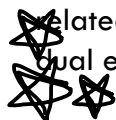
DUAL ENROLLMENT



Preschoolers in Texas and “Dual Enrollment”



Parents of an eligible student ages 3 or 4 shall have the right to "dually enroll" their student in both the public school and the private school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five or until the student is eligible to attend a district's public school kindergarten program, whichever comes first, subject to paragraphs (1)-(3) of this subsection. The public school district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment.



Preschoolers in Texas and “Dual Enrollment”

1. The student's ARD committee shall develop an individualized education program (IEP) designed to provide the student with a FAPE in the least restrictive environment appropriate for the student.
 2. From the IEP, the parent and the district shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the least restrictive environment and the policies and procedures of the district.
 3. For students served under the provisions of this subsection, the school district shall be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records.
- Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the school district.

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Preschoolers in Texas

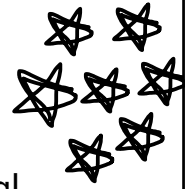


Under Texas law, parents of an eligible student ages 3 or 4 who decline dual enrollment for their student may request a services plan. The public school district where the private school is located is responsible for the development of a services plan, if the student is designated to receive services. For those pre-schoolers, the definition of a private school is expanded to include nonprofit preschools providing education that follows an adopted curriculum, including scope and sequence of courses and a formal review and documentation of student progress.

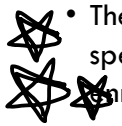
19 TAC 89.1096 (a)

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Specifics on Who can Dually Enroll



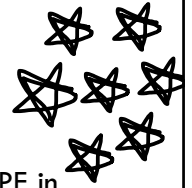
- The parent of an eligible child ages three or four has the right to dual enroll their child in both the public and private school:
 - Beginning on the child's third birthday; and
 - Continuing until whichever comes first:
 - The end of the school year in which the child turns five; or
 - The child is eligible to attend the District's kindergarten program.



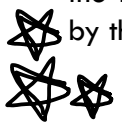
- The public school district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment.

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Duty to Dually Enrolled Students

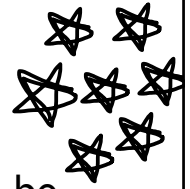


- These students are entitled to an ARDC to make an IEP designed to provide FAPE in LRE.
- From the IEP, the parent and the district shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the LRE and policies and procedures from the district.
- Complaints regarding the implementation of the components of the child's IEP that have been selected by the parent and the District may be filed with TEA.
- Parents can also request mediation, but a parent cannot request a DPH in regards to the implementation of the components of the student's IEP that have been selected by the parent and the district. 19 TAC 89.1096



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Duty to Dually Enrolled Students

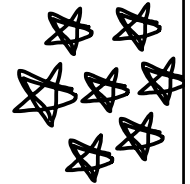


- For dually enrolled students, the school district shall be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records.
- Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the school district.

 19 TAC 89.1096


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Declining Dual Enrollment

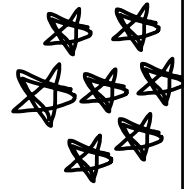


- Parents of eligible students who decline dual enrollment may request an Independent Services Plan for their student.
- The public school district where the private school is located is responsible for the development of a services plan.

19 TAC 89.1096



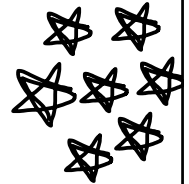
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Unexpected Closures – the Pandemic



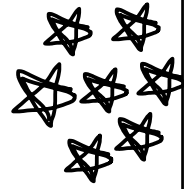
Extended Public School Closures: Pandemic



- If a district closes its physical buildings as a result of social distancing measures and other limitations that occur as a result of a pandemic or health emergency, but is providing virtual instruction or other remote learning opportunities for the general student population, then the district would be required to provide equitable services to private school children with disabilities.
- The district may consider other services or alternative means of service delivery, if feasible, such as telephone, videoconferencing, or consultative services.



Extended Public School Closures: Natural Disaster



- If a district must close because the functioning or delivery of educational services is fully disrupted, and does not provide any educational services to the general student population, then a district would not be required to provide equitable services to private school children with disabilities under IDEA during that same period of time. *OSEP 2021*
- A district should discuss both natural disaster and pandemic related school closure procedures with private schools during the consultation process.



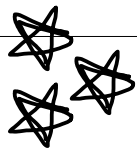
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WALSH GALLEGOS

KYLE ROBINSON & ROALSON P.C.



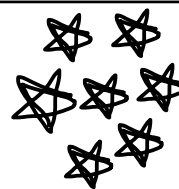
— YEAR —
ANNIVERSARY



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