

MEMORANDUM

TO: County Directors of Special Education  
Chief School Business Officials

FROM: Pat Homberg, Executive Director  
Office of Special Programs

DATE: May 13, 2011

SUBJECT: FY10 UNEXPENDED IDEA PRIVATE SCHOOL PROPORTIONATE SHARE FUNDS

The West Virginia Department of Education, Office of Special Programs (OSP), has established the following procedures for obligating and liquidating expiring funds reserved for students parentally placed in private schools but not fully expended for that purpose near the end of the grant award period. In the district's annual Five Year Online Strategic Plan –Special Education Component, as a condition of receiving funds under the Individuals with Disabilities Education Act (IDEA 2004), districts with students with disabilities who are parentally-placed in private schools located within the district are required to reserve a proportionate share of IDEA funding to be expended for their services. This requirement applies to both IDEA, Part B school age entitlement funds for children with disabilities ages 3-21 and IDEA, preschool entitlement funds for children with disabilities ages 3 through 5.

IDEA regulations at 34 CFR §300.133 require a district that has not expended all the funds reserved for this purpose by the end of the fiscal year for which the funds were approved to 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. **At the end of the carry-over period, and prior to the date the funds must be obligated (September 30), the district may apply to the OSP for permission to transfer unexpended funds to other budget items.** Budget transfers will be approved for districts demonstrating they have met the requirements of IDEA 2004 and Policy 2419: *Regulations for the Education of Students with Exceptionalities* regarding students parentally placed in private schools.

IDEA 2004 requirements are as follows:

- If private schools are located within the district, **conduct child find** for children in private schools. Records must be maintained on: 1) the number of children evaluated; 2) the number found eligible as part of child find, and 3) the number of children served.
- **Budget** the required amount of funds calculated within the Five-Year Online Strategic Plan – Special Education Component and include services in the online plan.
- **Develop Services Plans** for students served.
- **Document and implement a timely consultation process** among the district, private school officials and representatives of parents of parentally-placed private school children with disabilities, including:

- 1) how the process will operate throughout the school year to ensure parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;
- 2) the types of services to be funded;
- 3) how special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children; and
- 4) how and when those decisions will be made.

See *Attachment 1* for additional information. The OSP's *Documentation of Consultation with Private School and Parent Representatives* form completed for the applicable year documents the consultation requirements and plan. A copy may be found on the OSP website at <http://wvde.state.wv.us/osp/compliance/resources.html>.

If a district has met all requirements of the IDEA 2004 and Policy 2419: *Regulations for the Education of Students with Exceptionalities*, including making a sufficient effort to spend the required proportionate share as required by the district's plan, and, as of **June 30** prior to the expiration of the grant award, unexpended funds remain, the district may apply to the OSP for permission to move the unexpended funds to other allowable expenditures under Part B of IDEA to ensure the remaining funds may be obligated prior to September 30. Applications will be accepted beginning June 30.

The OSP will verify the required amount was budgeted in the FY10 IDEA and IDEA ARRA budgets through review of the district's online Project Financial Reports for amounts budgeted under program/function code 51510. To request permission for revising the IDEA, Part B or the IDEA Preschool budget, the district is required to submit the following documentation for the 2009-2010 and 2010-2011 school years:

- A list of private schools within the district;
- A brief description of the child find process, including how the district counts and maintains records for eligible students who do not have Services Plans and are not served;
- The district's count on December 1, 2008, and December 1, 2009, of: 1) private school students evaluated, 2) students found eligible and 3) students receiving services through a Services Plan;
- Copies of the completed and signed Documentation of Consultation forms for the 2009-2010 school year and the 2010-2011 school year;
- Documentation of attempts to consult with private schools that have not signed the affirmation, if any;
- A brief explanation of reasons why the funds could not be expended; and
- A budget revision request including completed forms WVDE 11-20-12 and 11-20-13 and budget journal entry indicating how the budget is being revised.

For FY10 funds please submit revision requests and documentation **no later than August 1** to ensure funds can be transferred and obligated prior to September 30.

Please direct any questions to Janice Hay, Coordinator, Office of Internal Operations, [jehay@access.k12.wv.us](mailto:jehay@access.k12.wv.us) or Dr. Sandra McQuain, Assistant Director, Office of Special Programs [smcquain@access.k12.wv.us](mailto:smcquain@access.k12.wv.us).

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c:/MyDocuments/PrivateSchoolShareMemo

## Attachment 1

### IDEA Regulations

# CHILDREN ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS

The reauthorized *Individuals with Disabilities Education Act (IDEA)* was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the act. The final regulations were published on Aug. 14, 2006. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education that covers a variety of high-interest topics and brings together the regulatory requirements related to those topics to support constituents in preparing to implement the new regulations.<sup>1</sup> This document addresses significant changes from preexisting regulations to the final regulatory requirements regarding children enrolled by their parents in private schools.

### IDEA Regulations

**1. Define parentally-placed private school children with disabilities.**

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in 34 CFR 300.13 or secondary school in 34 CFR 300.36, other than children with disabilities covered under 34 CFR 300.145-300.147.

[34 CFR 300.130] [20 U.S.C. 1412(a)(10)(A)]

**2. Clarify situations in which children with disabilities, aged 3 through 5 are considered parentally-placed.**

Children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in 34 CFR 300.13.

[34 CFR 300.133(a)(2)(ii)] [20 U.S.C. 1412(a)(10)(A)(i)]

**3. Explain which local educational agency (LEA) is responsible for providing services to parentally-placed children.**

Assigns responsibility for equitable participation to the local educational agency (LEA) where the private school is located. [Under prior law, this was the responsibility of the LEA of the parent's residence.] To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with 34 CFR 300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in 34 CFR 300.190 through 300.198.

[34 CFR 300.132(a)] [20 U.S.C. 1412(a)(10)(A)(i)]

## Child Find

### **4. Require LEAs where private schools are located to conduct child find for children in private schools.**

Each LEA must 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 served by the LEA, in accordance with 34 CFR 300.131(b) through 300.131(e), 300.111 and 300.201.

[34 CFR 300.131(a)] [20 U.S.C. 1412(a)(10)(A)(i)(II)]

In carrying out the requirements of this section, the LEA, or, if applicable, the State educational agency (SEA), must undertake activities similar to the activities undertaken for the agency's public school children.

[34 CFR 300.131(c)] [20 U.S.C. 1412(a)(10)(A)(ii)(III)]

The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with 34 CFR 300.301. Such child find process shall be completed in a time period comparable to that for other students attending public schools in the LEA.

[34 CFR 300.131(e)] [20 U.S.C. 1412(a)(10)(A)(ii)(V)]

Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

[34 CFR 300.131(f)] [20 U.S.C. 1412(a)(10)(A)(ii)]

The cost of carrying out child find, including individual evaluations, may not be considered in determining whether an LEA has met its obligations under 34 CFR 300.133 (expenditures), as described below.

[34 CFR 300.131(c)] [20 U.S.C. 1412(a)(10)(A)(ii)(IV)]

### **5. Require that child find ensure equitable participation.**

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.

[34 CFR 300.131(b)] [20 U.S.C. 1412(a)(10)(A)(ii)(II)]

### **6. Require maintenance of records on number of children evaluated and number found eligible as part of child find and the number of children served.**

Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under 34 CFR 300.130 through 300.144:

- The number of children evaluated;
- The number of children determined to be children with disabilities; and
- The number of children served.

[34 CFR 300.132(c)] [20 U.S.C. 1412(a)(10)(A)(i)(V)]

**7. Clarify that no parentally-placed child with a disability has an individual right to services.**

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.

[34 CFR 300.137] [20 U.S.C. 1412(a)(10)(A)]

**8. Contain requirements for services plans.**

In accordance with 34 CFR 300.132(a) and 300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under 34 CFR Part 300. The LEA must initiate and conduct meetings to develop, review, and revise a services plan for a child designated to receive services. The LEA must ensure that a representative of the religious or other private school attends each meeting. The LEA must use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls, if the representative cannot attend. The services plan must describe the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined through the consultation process described below that it will make available to its population of parentally-placed private school children with disabilities. The services plan must, to the extent appropriate:

- Meet the requirements of 34 CFR 300.320, or for a child ages three through five, meet the requirements of 34 CFR 300.323(b) with respect to the services provided; and
- Be developed, reviewed, and revised consistent with 34 CFR 300.321 through 300.324.

[34 CFR 300.132(b), 300.137(c) and 300.138(b)] [20 U.S.C. 1412(a)(10)(A)]

**9. Contain consultation requirements.**

Consultation must be timely and meaningful. To ensure that this occurs, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for parentally-placed children regarding the following:

- The child find process, including:
  - o How parentally-placed private school children suspected of having a disability can participate equitably; and
  - o How parents, teachers, and private school officials will be informed of the process.
- The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under 34 CFR 300.133(b), including the determination of how the proportionate share of those funds was calculated (See Appendix B to Part 300).
- The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.
- How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of:
  - o The types of services, including direct services and alternate service delivery mechanisms; and

- o How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
- o How and when those decisions will be made; and
- How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.  
[34 CFR 300.134] [20 U.S.C. 1412(a)(10)(A)(iii)]

**10. Require annual count of number of parentally-placed private school children with disabilities.**

Each LEA must:

- After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with 34 CFR 300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and
- Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

[34 CFR 300.133(c)] [20 U.S.C. 1412(a)(10)(A)]

## Attachment 2

### Office of Special Education Programs, U. S. Department of Education Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools

Revised April 2011

<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C1%2C>

**Selected questions and answers. Please refer to the detailed document at the URL above.**

**Question A-2:** What must the consultation process include?

**Answer:** Apart from specifying certain topics that must be addressed during consultation, the regulations offer LEAs and private schools a great deal of flexibility in conducting the consultation process. However, in accordance with 34 CFR §300.134, discussion between public school and private school officials must address--

- The child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;
- The determination of the proportionate share of Federal funds available to serve parentally placed private school children with disabilities, including the determination of how the proportionate share of those funds was calculated;
- How the consultation process among representatives of the agency, the private schools, and the parents of parentally placed private school children will take place, **including how the process will operate throughout the school year** to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;
- How, where, and by whom special education and related services will be provided, including a discussion of types of services—including direct services and alternate service-delivery mechanisms, as well as how the services will be apportioned if funds are insufficient to serve all children--and how and when decisions regarding services will be made; and
- How, if the LEA representatives disagree with the views of the private school officials on the provision of services or the types of services whether provided directly or through a contract, the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to adopt the recommendations of the private school officials.

**Question A-3:** What records on consultation must an LEA maintain?

**Answer:** When timely and meaningful consultation has occurred, the LEA must maintain documentation that the consultation has occurred, including a written affirmation signed by the representatives of the participating private schools, as required by 34 CFR §300.135. Some have asked if signing an attendance sheet at a meeting is all that is needed to document adequately that timely and meaningful consultation has occurred. Though these attendance sheets provide an accounting of who has attended meetings, the sheets themselves do not provide evidence that ongoing consultation has occurred. Therefore, the written

affirmation signed by the representatives of the participating private schools should reflect that those officials have indeed participated in timely and meaningful consultation that has continued throughout the school year. If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

**Question H-5:** If an LEA does not expend the entire proportionate share of Part B funds on children with disabilities placed by their parents in private schools by the end of the carry-over period, may the LEA return the unexpended funds to the SEA to be spent by the SEA or reallocated to another LEA?

**Answer:** No. If, after the carry-over period, the LEA is unable to expend the entire proportionate share and *assuming the LEA is in compliance with the child find, consultation, and other requirements related to parentally placed private school children with disabilities in 34 CFR §§300.129 through 300.144*, the LEA may use the unexpended funds - at the end of the period during which the funds may be spent on parentally placed private school children - to pay for other allowable Part B expenditures for that same LEA. **This situation should be the exception.** We emphasize that it is the clear intent of the Act that LEAs spend these funds on providing special education and related services to parentally placed private school children with disabilities, as provided in 34 CFR §§300.129 through 300.144. Therefore, if the LEA is not in compliance with these requirements and has not expended the funds on parentally placed private school children, the LEA must return the funds to the U.S. Department of Education.

The SEA is responsible for ensuring that LEAs are in compliance with these requirements. See 34 CFR §§300.149(a) and 300.600(b)(2). If an LEA has not expended the proportionate share by the end of the carry-over period, the SEA can monitor the LEA to ensure that it is meeting these requirements, including the requirement in 34 CFR §300.135 that the LEA obtain written affirmation signed by representatives of participating private schools that timely and meaningful consultation has occurred. In any event, there is no authority that permits the LEA to return the funds to the SEA to be spent by the SEA or reallocated to another LEA.