

***New Hampshire Department of Education
Bureau of Special Education
Private Schools and LEA responsibilities***

In brief, IDEA 2004 has made significant changes to the responsibilities of LEAs for children attending private schools within the LEA's geographic borders. The following questions have been asked by various stakeholders and the Bureau of Special Education is answering the questions based on the information we have at this time. This information may change as the new state and federal regulations are implemented. When updates are made, we will indicate when and where we have made any changes or additions to this Q and A.

Also, please refer to our page with the various Memos that the Bureau has sent out to school districts to answer some of your potential questions.

<http://www.ed.state.nh.us/education/doe/organization/instruction/SpecialEd/FY05MEMORANDUM.htm>

Q What was the reason behind this parentally placed change in the Federal law? (The districts are looking for a reason why so they can more easily accept and work with the requirement.)

A In the new regulations, the federal government explains that they are attempting to ease the requirements to evaluate students who are enrolled by their parents geographically far from home. This eliminates the need for LEAs to contact private schools outside of their geographic borders and now private schools only have one LEA to work with to ensure that students with disabilities who are enrolled in the private school may participate in IDEA equitable services. (See OSEP Memo 05-09)

Q When an infant, toddler, or preschooler attends a community child care/preschool program that is not in the child's town of residence, which district is responsible for Child Find responsibilities to seek out, identify and evaluate the child to determine eligibility?

A The Department's present understanding is that for infants, toddlers and pre-school age children, child find has not changed. The district in which the child resides is responsible for child find, evaluation, identification, and services.

Q The website does not include all private schools. The list on the website reflects mailing addresses, not actual location of the facility. Should the district send notification to PO boxes if the town where the PO box resides is within their jurisdiction?

A The private elementary and secondary schools that are subject to the parentally placed provisions regarding childfind and consultation is based on the geographical location of the school within the LEA not the PO Box location.

Q Who is the LEA for students who are in attendance in a private school?

A The district in which the private school is located is the LEA for the purposes of pro rata services consideration of parentally placed children.

Q Do the districts have to identify unapproved community private schools and the kids going there?

A The law specifies that the LEA “shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.”

Q Where can an LEA find a list of private, non-public elementary and secondary schools that are located within its’ district(s)?

A Please refer to the Department of Education website for a listing of schools.
<http://www.ed.state.nh.us/education/doe/organization/curriculum/nonpublicpage.htm>

Q How does the district know how many students with disabilities there are in private schools?

A They must find them using the consultation process and other means of locating those students.

Q If a private school believes a student has a disability, to whom is the referral sent?

A The private school refers any child whom they suspect of having a disability to the referral team for the district in which the private school is located. That district is responsible to evaluate the child and determine eligibility.

Q When a private school refers a student, what district completes the evaluation and what happens for identification and placement?

A The district in which the private school is located is responsible for child find, evaluation, and determination of eligibility. The district in which the private school is located is also responsible to consider the student in the pro rata services consideration.

Q Is there an individual entitlement or right to services for students who are parentally placed in a private school, whether in their home district or not?

A No

Q Should the districts have a separate meeting with the private schools before holding a parent meeting?

A No. The required consultation was designed to be a group meeting with all parties invited.

Q Students across state borders---how are they handled? Or vice versa? If Keene student is going to Brattleboro—is Brattleboro responsible for services?

A In the above example we believe Brattleboro would be responsible for pro rata services consideration if the student is identified and attending a private elementary

or secondary school in Brattleboro. The federal law sets no special conditions or exceptions for students crossing state borders. This provision supercedes previous IDEA law regarding pro rata share.

Q Does the LEA's responsibilities for pro rata share only involve students on ISPs (individual service plans)?

A ISPs would be developed for those students that have been determined to receive services. The LEA's responsibility is to provide their pro rata share of federal funding to some or all students that are parentally placed in private elementary and secondary schools in the geographic bounds of the District.

Q May the district in which the child is attending private school be in a position to bill the district that the child lives in for evaluations, services, etc?

A No.

Q Can local districts agree to continue to be responsible for evaluation of students who are residents of their own districts if they are attending private school in a neighboring town/district?

A No. For example: A student who lives in Smallville attends private school in neighboring Bigville. The student is referred to the Bigville student services office for an evaluation. Bigville processes the referral by calling student services in Smallville and Smallville handles it. The student is the responsibility of Bigville for child find, evaluation, and determination of eligibility until the student enrolls (or the parent indicates the intention of enrolling) in the Smallville public schools.

Q If the district in which the private elementary or secondary school is located conducts an evaluation and the student is found to be eligible for special education and the private school district is not obligated to write an IEP, then how does the process terminate?

A The district in which the private school is located considers the student for possible receipt of services during the consultation process. If the student **is determined/selected** to receive services under the pro rata share requirement, the district in which the private school is located will develop an ISP for the student. If the student is **not determined/selected** to receive services, no ISP is written and the process terminates for that student for that school year.

Q Is there a total overall amount of money that must be spent on students with disabilities that are enrolled in private schools within their borders?

A Yes, based on the formula below.

Our current understanding of the federal requirement is that the federal pro rata share of federal dollars should be calculated as follows:

Example

If the total LEA Part B Entitlement Funds are	\$ 100,000
Divide by all identified students under the supervision of the District (Private, Public, Pre-School)	<u>100</u>
This resulting number will be multiplied by the number of parentally placed students	\$ 1,000
Number of parentally placed identified students	<u>7</u>
Pro rata share to be expended on some or all of the 7 students	\$ 7,000

Q Will the services provided to the student be determined by the district in which the private school is located, following consultation with the private schools?

A Yes, and remember the district must also include parents of parentally placed private school children in the consultation.

Q Can the district collect educational history from the district of residence, including previous evaluations?

A Yes, they have an educational need to know.

Q Is a written release for an educational history required and what if the parent will not agree to share information?

A Our current understanding is they do not need permission to *transfer* records to a school the student is attending; however, districts should review their annual notification policy and provide parents the options within that policy. See FERPA 34 CFR Part 99.7

Q Does the parent need to allow the release of this information or is the district of the parent's residency entitled to it?

A Our current understanding is they do not need permission to *release* the information since the district of the student's residency may have a legitimate educational need to know. Districts should review their annual notification policy and provide parents the options within that policy. See FERPA 34 CFR Part 99.7

Q Who must be represented on the IEP Team that determines whether or not the student has an educational disability, based on the evaluations?

A The District where the private school is located must convene the same as any Evaluation Team per Ed 1107(b) and (c).

Q If the district or state in which the student resides is not involved in determining whether there is a disability, may the district that conducted the evaluation notify the resident district?

A Yes, they can

Q Must it notify?

A It's not required.

Q If the student has been determined to be educationally disabled, is there an obligation to write an IEP?

A As a parentally placed private school student the answer is NO.

Q If so, which district should write it, keeping in mind that the process of IEP development can be very expensive in staff time and may significantly exceed the per student allotment of funds for the district that conducted the Child Find process.

A The District where the student's parents reside would be required to develop an IEP ONLY if the parent(s) indicate their intention to enroll their child in the district in which they reside. At that point the student is entitled to a complete IEP.

Q If the district in which the student resides writes the IEP, how does it know that it is necessary to do so?

A The parent will inform the district in which the parent resides that they intend to enroll their child in public school in the district in which they live.

Q Does the responsibility for notifying the district in which the student resides lie with the district in which the private school is located, or with the parent, or with the private school, or with the state?

A It would be good collegial practice to notify the district in which the student's parents reside.

Q What definition of a student with a disability must be used for this purpose?

A Ed 1102.09 "Child with a disability"

Q Is the district in which the private school is located obligated to provide services, based solely on data provided by the private schools, if it cannot be verified?

A No. Services, be they pro rata services or full entitlement services must be based on an LEA evaluation and identification that complies with Ed 1107.

Q Are GED programs considered private schools?

A No.

Q If the district is already providing a service for kids attending a private school in another district, do they stop providing that service if the other district agrees to provide the same type of service?

A Yes, in this situation, the district should stop providing the services because the district where the student has been placed by his/her parents will now make and implement these decisions.

Q How are these students to be tracked in SPEDIS?

A The district in which the private school is located is responsible for entering the data into SPEDIS.

Q Does the host district have to be responsible for home to service, then service to school?

A No. Parentally placed children receive only those ISP services which the LEA selects through the consultation process.

Q What is the criteria in determining a private school? Do they have to be approved private schools?

A The new federal law and proposed regulations do not specify. A reasonable interpretation would be that the private school be approved by NHDOE..

Q Do you add identified preschoolers to the equation if the private school is a preschool/kindergarten school?

A No, only count the kindergarten aged students.

Q Would JAG programs (Jobs for American Graduates), some of which are in high schools and some at colleges, be considered as a private school and liable for child find duties by local LEA? (These students have officially dropped out but are between 16-21 years old.)

A No.

Q Eligibility for "out-of-staters". Are they identified by NH rules or by their home-state rules?

A Nationwide, students already attending a private school, placed by the parents, are determined to eligible by the LEA in which the private school is geographically located, through the standard Team process.