CHAPTER 14

CHILDREN IN PRIVATE AND PAROCHIAL SCHOOLS

INTRODUCTION

Federal and State laws and regulations recognize that children with exceptionalities may be receiving their education in private elementary and secondary school settings for different reasons. In different situations, school districts have different obligations. A school's obligation to provide special education services or pay for services provided to children in private schools depends on whether:

- The child with an disability is placed in the private school by the public school as a means of providing special education and related services;
- The child with an exceptionality (including gifted) is enrolled in a private school by his or her parents because the provision of a free appropriate public education (FAPE) is at issue; or
- The child with an exceptionality (including gifted) is voluntarily enrolled in a private school by his or her parents to receive general education.

Kansas defines a private school as: "an organization which regularly offers education at the elementary or secondary level, which is exempt from federal income taxation under section 501 of the federal internal revenue code of 1954, as amended, which conforms to the civil rights act of 1964, and attendance at which satisfies any compulsory school attendance laws of this state" (K.S.A. 72-5392(c)). The definition of private schools includes parochial schools.

Additionally, Kansas defines elementary and secondary schools as follows: (1) "elementary school" means any nonprofit institutional day or residential school that offers instruction in any or all of the grades kindergarten through nine. (2) "Secondary School" means any nonprofit institutional day or residential school that offers instruction in any or all of the grades nine through 12.

These definitions do not include preschool programs or home schooling. Therefore, children ages 3 and 4, or 5 year old children not in kindergarten are not included in the private school requirements. Charter schools in Kansas are considered part of local school districts and are not private schools. In addition, there are specific requirements for children identified as gifted who are enrolled by their parents in private schools.

This chapter addresses the following topics:

A. Children Placed in Private Schools by the Public School
B. Children Enrolled by Their Parents in Private Schools Where FAPE is at Issue
C. Child Find for Children Voluntarily Enrolled in Private Schools by Their Parents
D. State Requirements for Children Voluntarily Enrolled in Private Schools by Their Parents
E. Federal Requirements for Children Voluntarily Enrolled in Private Schools by Their Parents
F. Mediation and Due Process Rights of Private School Children

A. CHILDREN PLACED IN PRIVATE SCHOOLS BY THE PUBLIC SCHOOL

Both Federal and State laws and regulations allow a school district to place a child with a disability in a private school in order to meet its obligation to provide FAPE to the child. Kansas law clarifies that the use of private schools to meet the requirement for FAPE does not apply to children who are identified as gifted, unless they also have a disability that requires placement in a private school in order to receive FAPE. In most situations, however, schools are able to offer services to meet children's needs within their districts. Only when the IEP team determines that the district is not able to provide the services locally would they arrange for services in a private school. Sometimes a private school setting is the least restrictive environment where a child can achieve

educational benefit. In such cases, the IEP team may determine that the most appropriate educational placement is the private school. (See Chapter 6, Educational Placement and Least Restrictive Environment.)

When the public school determines, through the IEP process, that a child with a disability should be placed in a private school or facility, the child's educational program, including special education and related services, must:

- be provided according to an appropriately developed IEP and at no cost to the parents;
- ensure the special education program is provided by staff who meet KSDE personnel standards, although the private school teachers are not required to be highly qualified;
- ensure that the private school provides services consistent with IDEA requirements and other pertinent Federal and State laws and regulations (e.g., in accordance with IEP requirements); and
- ensure that the child has all rights of a child with a disability who is served by the public school.

Before the public school places a child with a disability in a private school or facility, the public school must initiate and conduct a meeting to develop an IEP for the child. The public school must ensure that a representative of the private school or facility attends the meeting. If a representative cannot attend, the public school must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

After the child with a disability enters the private school or facility, the public school responsible for providing FAPE to the child may allow any meetings to review and revise the child's IEP to be initiated and conducted by the private school or facility. If the private school or facility initiates and conducts the IEP meeting, the private school must notify the public school and the public school must ensure that the parents and a public school representative participate in any decision about the child's IEP. In addition, the public school and the parent must agree to any proposed changes in the IEP before those changes are implemented.

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(a) (2) Each board shall provide a free appropriate public education for exceptional children enrolled in the school district and for children with disabilities who are placed in a private school or facility by the school district as the means of carrying out the board's obligation to provide a free appropriate public education under this act and for children with disabilities who have been suspended for an extended term or expelled from school.

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(a) Each board, in order to comply with the requirements of this act shall have the authority to:

(5) Contract with any private nonprofit corporation or any public or private institution, within or outside the state, which has proper special education or related services for exceptional children. Whenever an exceptional child is educated by a private nonprofit corporation or a public or private institution as provided under this paragraph, such child shall be considered a pupil of the school district contracting for such education to the same extent as other pupils of such school district for the purpose of determining entitlements and participation in all state, federal and other financial assistance or payments to such school district.

K.A.R. 91-40-22. Agency placement in private schools or facilities.

(a) If an agency places a child with a disability in a private school or facility as a means of providing FAPE to the child, the agency shall remain responsible for ensuring that the child is provided the special education and related services specified in the child's IEP and is afforded all the rights granted by the law.

(b) (1) Before an agency places a child with a disability in a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child.

(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If a representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(c) (1) After a child with a disability enters a private school or facility, the agency responsible for providing FAPE to the child may allow any meetings to review and revise the child's IEP to be initiated and conducted by the private school or facility.

(2) If the private school or facility initiates and conducts these meetings, the agency shall ensure that the parent and an agency representative are involved in any decision about the child's IEP and shall agree to any proposed changes in the IEP before those changes are implemented.

B. CHILDREN ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSSUE

If the parents of a child with an exceptionality (including gifted), who previously was receiving special education and related services from the public school, enroll their child, without the consent of or referral by the public school, in a private preschool or a private elementary or secondary school because the parents believe the child

was not receiving FAPE from the public school, a court or special education due process hearing officer may require the agency to reimburse the parents for the cost of that enrollment only if the hearing officer makes both of the following findings:

1. The public school did not make FAPE available to the child in a timely manner before the private school enrollment; and
2. The private school placement made by the parents is appropriate to meet the needs of the child.

A court or special education due process hearing officer may find that a private school placement by the parents is appropriate for a child although that placement does not meet State standards that apply to special education and related services which are required to be provided by the public school.

A court or special education due process hearing officer may deny or reduce any reimbursement for private school placement by the parents, if the court or special education due process hearing officer makes any of the following findings:

1. At the most recent IEP meeting that the parents attended before making the private school placement, the parents did not inform the IEP team that the parents were rejecting the services or placements proposed by the public school to provide FAPE to their child, including a statement of their concerns and their intent to enroll their child in a private school at public expense; **or, in the alternative**
   At least 10 business days, including any holidays that occur on a business day, before removal of the child from public school, the parents did not give written notification to the public school that they were rejecting the services or placements proposed by the public school to provide FAPE to their child, including a statement of their concerns and their intent to enroll their child in a private school at public expense;
2. Before the parents' removal of the child from public school, the public school provided Prior Written Notice to the parents of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation; or
3. The actions of the parents in removing the child from public school were unreasonable.

A court or special education due process hearing officer must not deny or reduce reimbursement of the cost of a private school placement for failure to provide the notification to the public school, if the court or special education due process hearing officer makes any of the following findings:

- Compliance with the notification requirement would likely have resulted in physical harm to the child.
- The public school prevented the parents from providing the required notification.
- The public school did not inform the parents of their requirement to notify the school of their intent to remove their child.

A court or special education due process hearing officer, at its discretion, may allow a parent full or partial reimbursement of the costs of a private school placement even though the parent failed to provide the notice required, if the court or hearing officer finds either of the following:

1. the parent cannot read or write in English, **or**
2. compliance with the prior notice requirement would likely have resulted in serious emotional harm to the child.

The public school must be given an opportunity to offer FAPE to the child before tuition reimbursement can become an issue. However, the special education due process hearing officers and courts retain their authority under prior case law to award appropriate relief when a district fails to provide a FAPE for a child who has not yet received special education and related services.

Federal regulations (34 C.F.R. 300.403) address this issue, as do State regulations:

K.A.R. 91-40-41. Private school placement by parents to obtain FAPE.
(a) (1) If the parent of an exceptional child who previously was receiving special education and related services from an agency enroll the child, without the consent of or referral by the agency, in a private preschool or a private elementary or secondary school because the parent

believes the child was not receiving FAPE from the agency, a court or special education due process hearing officer may require the agency to reimburse the parent for the cost of that enrollment only if the court or due process hearing officer makes both of the following findings:

(A) The agency did not make FAPE available to the child in a timely manner before the private school enrollment.

(B) The private school placement made by the parent is appropriate to meet the needs of the child.

(2) A court or due process hearing officer may find that a private school placement by a parent is appropriate for a child although that placement does not meet state standards that apply to special education and related services that are required to be provided by public agencies.

(b) Subject to subsection (c), a court or due process hearing officer may deny or reduce any reimbursement for private school placement by a parent, if the court or due process hearing officer makes any of the following findings:

(1) (A) At the most recent IEP meeting that the parent attended before making the private school placement, the parent did not inform the IEP team that the parent was rejecting the services or placements proposed by the agency to provide FAPE to the child, including a statement of concerns and the intent to enroll the child in a private school at public expense; or

(B) at least 10 business days, including any holidays that occur on a business day, before removal of the child from public school, the parent did not give written notice to the public agency of the information specified in paragraph (1) (A) of this subsection.

(2) Before the parent's removal of the child from public school, the agency notified the parent, in accordance with the requirements of K.S.A. 72-988 and amendments thereto, of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parent did not make the child available for the evaluation.

(3) The actions of the parent in removing the child from public school were unreasonable.

(c) Notwithstanding the notice requirements in subsection (b), a court or due process hearing officer shall not deny or reduce reimbursement of the cost of a private school placement for failure to provide the notice, if the court or due process hearing officer makes any of the following findings:

(1) Compliance with the prior notice requirement would likely have resulted in physical harm to the child.

(2) The agency prevented the parent from providing the required prior notice.

(3) The parent had not been given notice by the agency of the prior notice requirement prescribed in subsection (b).

(d) At the discretion of a court or due process hearing officer, the court or hearing officer may allow a parent full or partial reimbursement of the cost of a private school placement even though the parent failed to provide the notice required in subsection (b), if the court or hearing officer finds either of the following:

(1) The parent is not literate and cannot write in English.

(2) Compliance with the prior notice requirement would likely have resulted in serious emotional harm to the child.

C. CHILD FIND FOR CHILDREN VOLUNTARILY ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS

When children are enrolled by their parents in private schools, the public school has continuing responsibility for child find and must locate, evaluate, and identify children with exceptionalities (including gifted) in private schools just as they do in the public schools. Federal and State laws require the district where the private school is located to conduct child find activities to locate children with disabilities attending private elementary and secondary schools that are located in the jurisdiction of the school district. This includes children with disabilities who reside in another state but attend a private school that is located within the boundaries of a public school district. The district of residence is still required to conduct child find activities for children who may be identified as gifted and for children ages 3 and 4, or 5 year old children not in kindergarten. However, Kansas schools do not have a responsibility to locate, identify, evaluate or serve gifted children who reside in another state.

In meeting the child find obligation with regard to children with disabilities attending private schools within the school district boundaries, the public schools must consult with appropriate representatives of private schools and parents of private school children with disabilities to determine how best to conduct child find activities. The methods chosen to locate, identify, and evaluate must be comparable to methods used for children in public schools. Additionally, they will determine how parents, teachers, and private school officials will be informed of the process. (See Chapter 2, General Education Interventions and Screening.)

The activities undertaken to carry out the child find responsibility must meet the following criteria:

- Be similar to the activities undertaken for exceptional children enrolled in the public schools;
- Provide for the equitable participation of private school children;
- Provide for an accurate count of children with disabilities enrolled in the private schools; and
- Be completed in a time period comparable to the time for these activities in the public schools.

If the parents of a child who is voluntarily placed in a private school does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school may not use the consent override procedures of mediation or due process, and the school is not required to consider the child as eligible for special education services (K.A.R. 91-40-27(f)(2).

If a child is enrolled, or is going to enroll in a private school that is not located in the parent's district of residence, parental consent must be obtained before any personally identifiable information about the child is released between public school officials in the district where the private school is located and public school officials in the district of the parent's residence (34 C.F.R. 300.622(a)(3)).

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(a) (1) Each board shall adopt and implement procedures to assure that all exceptional children residing in the school district, including children enrolled in private schools, who are in need of special education and related services, are identified, located and evaluated.

K.A.R. 91-40-42. Child find and count of children with disabilities enrolled in private schools; determination of children to receive services.

(a) Child find activities.

(1) Each board, in accordance with K.A.R. 91-40-7, shall locate, identify, and evaluate all children with disabilities who are enrolled in private elementary or secondary schools located in the school district, including children with disabilities who reside in another state.

(2) The activities undertaken to carry out this responsibility shall meet the following criteria:

(A) Be similar to the activities undertaken for exceptional children enrolled in the public schools;

(B) provide for the equitable participation of private school children;

(C) provide for an accurate count of children with disabilities enrolled in the private schools; and

(D) be completed in a time period comparable to the time for these activities in the public schools.

(3) Each board, in accordance with K.A.R. 91-40-42a, shall consult with representatives of private schools and parents of private school children concerning the activities described in paragraph (1) of this subsection.

(4) The cost of carrying out the child find activities required under this regulation, including individual evaluations of private school children, shall not be considered in determining if an agency has met its obligation to provide a proportionate share of its federal funds for private school children.

(b) Child count activities.

(1) Each board shall annually conduct a count of the number of children with disabilities who are enrolled in private schools located in the school district. This count, at the discretion of each board, shall be conducted on either December 1 or the last Friday of October of each school year.

(2) Each board, in accordance with K.A.R. 91-40-42a, shall consult with representatives of private schools and parents of private school children concerning the annual count required in paragraph (1) of this subsection.

(3) Each board shall use the child count required by this subsection to calculate the amount of funds provided to the school district under the federal law that the school district must allocate for the purpose of providing special education and related services to private school children with disabilities in the next succeeding school year.

(c) Each board, based upon the results of its child find activities under subsection (a), shall consult with representatives of private schools and parents of children with disabilities enrolled in private schools and then determine which private school children will be provided special education and related services by the board.

D. STATE LAW REQUIREMENTS FOR CHILDREN VOLUNTARILY ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS

The State law relating to children voluntary enrolled in private schools by their parents significantly adds to Federal requirements. State law requires that when a parent requests services, the school district of residence will make available all services and will provide any or all of the special education and related services that are identified by an IEP team for any child with an exceptionality, to which the parent provides consent . Therefore, the parent of a child attending a private school would go to the district of residence to request services.

Children whose parents request the district of residence to provide services identified by the IEP team would receive services through an IEP. The IEP is to be developed as it would be for any other child. Parents of children attending a private school and receiving services in a public school in accordance with an IEP have all the due process rights under Federal and State laws and regulations and must have a free appropriate public education made available to them.

State law allows for the district of residence to expend State and local funds to provide services to children with exceptionalities voluntarily enrolled by their parents in private schools under the following conditions:

- In consultation with the parent or guardian of the child and with officials of the private school, the public school district determines the site for services.

- If services are provided at the public school site, the services must be provided on an equal basis with the provision of such services for children in public schools.
- If services are provided at the public school, the public school district must provide transportation to and from the public school, but it is not required to provide transportation outside the boundaries of the resident school district.
- If the public school provides the services at the private school, amounts expended for providing the services need not exceed the average cost of providing the same services to children with that same exceptionality in the public school. (K.S.A. 72-5393)

For children whose parents request any of the services identified by the IEP team and the services are provided at the private school, the school district of residence is not required to spend more than the "average cost" of providing the same service in public school. In determining this cost, the public school must look to similar services in the public school for children with the same exceptionality. The average amount expended may or may not allow for the provision of services at a level that would provide a free appropriate public education. For services provided at a private school, State law simply requires the expenditure of this level of funding, however, and does not require the provision of FAPE. When calculating the average cost, the public school should not include the child in private school in the numbers of children currently being served.

State law requires the district of residence to provide transportation if the child needs it to participate in special education and related services. However, the district of residence does not have to provide transportation outside of the district boundaries. Therefore, an offer of services within the district meets the district's obligation of making FAPE available. The district of residence could contract for the services with the district where the private school is located, but is not required to do this.

Parents may refuse to accept some or all of the offered services. In this case, the public school should have documentation that the parents refused to accept some or all of the services recommended by the IEP team. One way this could be documented is by providing Prior Written Notice for the services identified on the IEP and the parent would consent to only the services they are accepting. For example, the parents may refuse services because they are unable to provide transportation for the child to the services in the district of residence.

State law allows for services to be provided at either the public or private school, but forbids the provision of special education and related services "in connection with religious courses, devotional exercises, religious training, or any other religious activity." The site where services are provided is determined by the school district in consultation with the parents and private school officials.

Under State law, children identified as gifted who are enrolled in a private school outside of their district of residence are also to be provided special education services by the district in which the child resides. The resident district would conduct the child find, do the evaluation, determine eligibility, develop an IEP and offer services in the district of residence. However, the resident district is not required to cross district boundaries to provide special education and related services. Therefore, an offer of services provided in the district would fulfill its requirement to make FAPE available even if the parent refuses the services at that site.

K.S.A. 72-966 Duties of boards of education in meeting requirements of law; responsibilities of state board of education and other state agencies; interagency agreements; dispute resolution.

(a) (3) Each board shall provide exceptional children who are enrolled by their parents in private schools with special education and related services in accordance with state law and federal law.

K.S.A. 72-5392

(c) "Private, nonprofit elementary or secondary school" means an organization which regularly offers education at the elementary or secondary level, which is exempt from federal income taxation under section 501 of the federal internal revenue code of 1954, as amended, which conforms to the civil rights act of 1964, and attendance at which satisfies any compulsory school attendance laws of this state.

K.S.A. 72-5393

Every school district shall provide special education services for exceptional children who reside in the school district and attend a private, nonprofit elementary or secondary school, whether such school is located within or outside the school district upon request of a parent or guardian of any such child for the provision of such services. No school district shall be required to provide such services outside the school district. Any school district may provide special education services for exceptional children who attend a private, nonprofit elementary or secondary school located within the school district whether or not all such children reside in the school district. Special education services, which are provided under this section for exceptional children who attend a private, nonprofit elementary or secondary school which is

located in the school district may be provided in the private, nonprofit elementary or secondary school or in the public schools of the school district. The site for the provision of special education services under this section for an exceptional child shall be determined by the school district in consultation with the parent or guardian of the child and with officials of the private, nonprofit elementary or secondary school. Special education services provided under this section for exceptional children who attend a private, nonprofit elementary or secondary school are subject to the following requirements:

(a) If the services are provided for in the private, nonprofit elementary or secondary school, amounts expended for the provisions of such services shall not be required to exceed the average cost to the school district for the provision of the same services in the public schools of the school district for children within the same category of exceptionality;

(b) If the services are provided for in the public schools of the school district, the services shall be provided on an equal basis with the provision of such services for exceptional children attending the public schools; and

(c) If the services are provided in the public schools of the school district, transportation to and from such public school shall be provided by the school district.

K.S.A. 72-5394

No special education services shall be provided in connection with religious courses, devotional exercises, religious training, or any other religious activity.

E. FEDERAL REQUIREMENTS FOR CHILDREN VOLUNTARILY ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS

Federal law requires that children with disabilities in private schools (K-12) be provided an opportunity for participation in special education services. Federal law makes it clear that a child with a disability in a private school has no individual right to special education or related services. Rather, the public school district where the private school is located must ensure that a proportionate share of Federal funding is used to provide services to this population of children. Therefore, under Federal Law, in almost all cases, the public school district where the private school is located would not be obligated to provide any or all special education and related services to every child with a disability enrolled in a private school located within its boundaries.

This section of the Federal and State laws and regulations requiring the expenditures of a proportionate share of Federal funding to provide special education services does not include children identified as gifted. Additionally, because the Kansas definition of a private elementary school does not include the education of children prior to kindergarten, this part of the Federal and State laws and regulations also does not include preschool age children with disabilities enrolled in preschool programs.

1. Consultation Requirements

Each school district must annually consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities attending private schools within the school district during the design and development of special education and related services for parentally-placed children and before making decisions regarding the following:

- The child find process, including:
  - How parentally-placed private school children suspected of having a disability can participate equitably; and
  - 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.
- The consultation process among the school district, 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:
  - The types of services, including direct services and alternate service delivery mechanisms; and
  - How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

- How and when those decisions will be made; and
- How, if the school district 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.

Consultations with appropriate representatives of private schools and parents of private school children with disabilities should occur in a timely manner before decisions are made that affect the ability of children in a private school to participate in services. These representatives of private schools and parents of the private school children with disabilities must have a genuine opportunity to express their views and have meaningful input into the decision-making process.

The process for allocating the proportionate share of funds and provision of special education and related services to parentally placed private school children under Federal requirements is described below.

K.A.R. 91-40-42a. Consultation.

(a) Each board shall engage in timely and meaningful consultation with representatives of private schools located in the school district and representatives of parents of children with disabilities enrolled in those private schools before making determinations regarding the following matters:

(1) How the consultation process among the board, private school officials, and representatives of parents of private school children shall be organized and carried out, including how the process will operate throughout the school year to ensure that children with disabilities who are identified throughout the school year can receive the special education and related services that are provided to private school children;

(2) how the child find process will be conducted, including the following:

(A) How children enrolled in private schools who are suspected of having a disability can participate equitably in the child find process; and

(B) how parents, teachers, and private school officials will be informed of the process;

(3) (A) How the determination of the proportionate share of federal funds that will be available to serve private school children will be made, including a review of how the proportionate share of those funds must be calculated under the federal law; and

(B) how special education and related services will be apportioned if the proportionate share of federal funds are insufficient to serve all of the private school children who are designated to receive services; and

(4) (A) How, where, and by whom special education and related services will be provided to private school children, including a discussion of the means by which services will be delivered, including direct services and services through contracts; and

(B)(2) how and when final decisions on these issues will be made by the board.

(b) (1) When a board of a school district believes that it has completed timely and meaningful consultation as required by this regulation, the board shall seek to obtain a written affirmation, signed by representatives of participating private schools, affirming that the consultation did occur.

(2) If representatives of the private schools do not provide the affirmation within 30 days of the date the affirmation is requested, the board shall forward documentation of the consultation to the state department.

(c) (1) A representative of a private school may submit a complaint to the state department alleging that the board of the school district in which the private school is located failed to engage in consultation that was meaningful and timely or did not give due consideration to the views of private school representatives. A copy of the complaint shall also be submitted to the board.

(2) Each complaint submitted by a private school representative shall include a statement of the specific requirement that the board allegedly failed to meet and the facts that support the allegation.

(3) Within 30 days of receiving a complaint, the board shall prepare a reply to the complaint and submit the reply and documentation supporting its position to the state department.

(4) (A) Within 60 days of receiving a complaint, the state department shall issue a determination on whether the complaint is justified and any corrective action that is to be taken.

(B) If the private school representative is dissatisfied with the decision of the state department, the representative may appeal the decision by submitting an appeal to the Secretary of the United States department of education as specified in the federal regulations.

2. Calculating the Allocation of Proportionate Share of Funds

Federal law describes the minimum amount of funds that must be expended to provide services for children enrolled in private schools by their parents. That amount is calculated by determining the number of children with disabilities who are enrolled in private schools by their parents within the school district, and have been identified as a child with a disability by the public school district, whether or not they are receiving services. This count must be reported in the application for the Part B federal funds received for children ages 3-21 and 3-5 preschool funds.

To meet Federal requirements, a public school district must have an accurate count of the number of children with disabilities voluntarily enrolled by their parents in private schools located within the district. This count includes children attending private schools in the district that are identified as eligible for special education and related services by the public school, whether or not they are receiving any special education services. The public school must consult with appropriate representatives of private schools and representatives of parents of private school children with disabilities in deciding how to conduct the annual count of children with disabilities in private schools. The annual private school count may be different than the annual Federal child count of children receiving special education or related services from the public school district or cooperative. The annual private school child count is to be used by the public school district for planning the level of services to be provided to private school children and in determining the proportionate share of funds to be used in the subsequent school year.

If State categorical aid funds or local funds are being used to provide services to children with disabilities who are enrolled in a private school, this expenditure must supplement not supplant the proportionate share amount and meet the requirement of the public school to spend its proportionate share of funds on such children. The cost of carrying out the child find activities, including an evaluation, cannot be included in determining if the district has met its obligation to provide a proportionate share of funds for private school children. If all funds allocated for special education and related services to private school children are not expended during the school year, the funds must be carried over to provide services to children in private schools in the next subsequent school year. (34 CFR 300.133) (K.A.R. 91-40-42)

The Kansas definition of private school only addresses settings for children beginning at kindergarten. Therefore, the proportionate share of funds under the preschool federal allocation would be calculated for five year old children voluntarily enrolled in a private schools K-12.

For complete information on allocation of funds for private schools contact KSDE, Special Education Services at 800-203-9462 and see Appendix B of the Federal Regulations, August 14, 2006.

K.A.R. 91-40-44. Allocation and expenditure of federal funds; reports.

(a) To meet the requirement of K.A.R. 91-40-43(a), each board shall allocate, for expenditure in providing special education and related services to private school children, the amounts specified below.

(1) For private school children aged three through 21, an amount calculated as follows:

(A) Divide the number of private school children aged three through 21 who are enrolled in private schools located in the school district by the total number of children with disabilities aged three through 21 in the school district; and

(B) multiply the quotient determined under paragraph (1) (A) times the total amount of federal funds received by the school district under section 1411 (f) of the federal law; and

(2) for private school children aged three through five, an amount calculated as follows:

(A) Divide the number of private school children aged three through five who are enrolled in private elementary schools located in the school district by the total number of children with disabilities aged three through five in the school district; and

(B) multiply the quotient determined under paragraph (2) (A) times the total amount of federal funds received by the school district under section 1419 (g) of the federal law.

(b) In making the calculations under subsection (a), each board shall include all private school children whether or not those children are actually receiving special education or related services from the school district.

(c) (1) Each board, to the extent necessary, shall expend the amounts calculated under subsection (a) of this regulation to provide private school children with those special education and related services that have been determined will be provided to those children under the provisions of K.A.R. 91-40-43.

(2) If a board does not expend all of the funds allocated for the provision of special education and related services to private school children during a school year, the board shall allocate the unexpended funds for the purpose of providing services to private school children during the next succeeding school year.

(d) (1) A board, in meeting the requirement of subsection (c) of this regulation, shall not be authorized to include expenditures made by the board for child find activities under K.A.R. 91-40-42.

(2) A board, in meeting the requirement of subsection (c) of this regulation, shall be authorized to include expenditures made by the board to provide transportation to private school children to receive special education and related services.

(e) Each board shall maintain records regarding the following information related to children enrolled in private schools located in the school district:

(1) The number of children evaluated;

(2) the number of children determined to be children with disabilities; and

(3) the number of children provided with special education and related services.

Appendix B to Part 300—Proportionate Share Calculation

Each LEA must expend, during the grant period, on the provision of special education and related services for the parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA an amount that is equal to—

(1) A proportionate share of the LEA's subgrant under section 611(f) of the Act for children with disabilities aged 3 through 21.

This is an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of parentally placed private school children with disabilities aged 3 through 21 enrolled in private elementary schools and secondary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA aged 3 through 21; and

(2) A proportionate share of the LEA's subgrant under section 619(g) of the Act for children with disabilities aged 3 through 5.

This is an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the total number of parentally-placed private school children with disabilities aged 3 through 5 enrolled in private elementary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools located in the LEA aged 3 through 5.

Consistent with section 612(a)(10)(A)(i) of the Act and § 300.133 of these regulations, annual expenditures for parentally-placed private school children with disabilities are calculated based on the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA eligible to receive special education and related services under Part B, as compared with the total number of eligible parentally-placed private school children with disabilities enrolled in private elementary schools located in the LEA. This ratio is used to determine the proportion of the LEA's total Part B subgrants under section 611(f) of the Act for children aged 3 through 21, and under section 619(g) of the Act for children aged 3 through 5, that is to be expended on services for parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA.

The following is an example of how the proportionate share is calculated:

There are 300 eligible children with disabilities enrolled in the Flintstone School District and 20 eligible parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA for a total of 320 eligible public and private school children with disabilities (note: proportionate share for parentally-placed private school children is based on total children eligible, not children served). The number of eligible parentally-placed private school children with disabilities (20) divided by the total number of eligible public and private school children with disabilities (320) indicates that 6.25 percent of the LEA's subgrant must be spent for the group of eligible parentally-placed children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. Flintstone School District receives $152,500 in Federal flow through funds. Therefore, the LEA must spend $9,531.25 on special education or related services to the group of parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. (Note: The LEA must calculate the proportionate share of IDEA funds before earmarking funds for any early intervening activities in § 300.226).

The following outlines the calculations for the example of how the proportionate share is calculated. Proportionate Share Calculation for Parentally-Placed Private School Children with Disabilities For Flintstone School District:

Number of eligible children with disabilities in public schools in the LEA 300
Number of parentally-placed eligible children with disabilities in private elementary schools and secondary schools located in the LEA .. 20
Total number of eligible children 320
FEDERAL FLOW-THROUGH FUNDS TO FLINTSTONE SCHOOL DISTRICT
Total allocation to Flintstone $152,500
Calculating Proportionate Share:
Total allocation to Flintstone 152,500
Divided by total number of eligible children 320
Average allocation per eligible child 476.5625
Multiplied by the number of parentally placed children with disabilities 20
Amount to be expended for parentally- placed children with disabilities 9,531.25

3. Services Provided With A Services Plan

After the public school district determines the amount of funds that must be allocated for providing services to children with disabilities in private schools located within the district, the public school district, in consultation with appropriate representatives of private schools and representatives of parents of children with disabilities voluntarily enrolled in private schools, must determine how the funds will be allocated, how and where services will be provided and by whom. The public school district, however, must ultimately determine the types and levels of services to be provided.

If a child with a disability, who is voluntarily enrolled by their parents in a private school, receives services offered by the school district where the private school is located, with its proportionate share of funds according to the agreement reached in the consultation, the school would develop a Services Plan for the child. The regulations refer to this plan as a Services Plan to avoid confusing it with an IEP. An IEP is an inherent component of a free appropriate public education (FAPE). A "Services Plan" is to be used because it is clear under Federal and State laws and regulations that these children in private schools do not have an individual right to receive FAPE. The parents of children served with a Services Plan do not have any due process rights beyond issues related to child

find which includes evaluation/reevaluation. Parents may file a complaint with the State Department of Education if they feel that the public school has failed to meet their obligations under the Federal and State law and regulations.

Kansas laws and regulations require the district of residence to make FAPE available through an IEP for any child voluntarily enrolled in a private school by their parent. Therefore, the district where the private school is located would use a Services Plan only for non-resident children for whom they may be providing limited services with their proportionate share of funds.

The Services Plan describes the specific special education and/or related services to be provided to the child as a result of the consultation with appropriate representatives of private schools and representatives of the parents of private school children. To the extent appropriate, the Services Plan includes all of the IEP components. The elements in each child's Services Plan may vary depending on the services to be provided. Like an IEP, the Services Plan must be reviewed and revised on an annual basis, and as necessary.

Many children's Services Plans will include:

- The child's present level of academic achievement and functional performance;
- The measurable annual goals, including benchmarks or short-term objectives, if appropriate;
- A statement of the special education, related services, supplementary aids and services and modifications;
- A statement of the program accommodations, or supports;
- An explanation of the extent, if any, to which the child will not participate with children without disabilities in the general education environment;
- The projected date for the beginning of the services and modifications, and the amount, anticipated frequency, location and duration of the services and modifications; and
- A statement of how the child's progress toward the measurable annual goals will be measured and how the parents will be regularly informed of their child's progress.

K.A.R. 91-40-43. Services to private school children.

(a) Consistent with the number and location of private school children in the school district, each board shall provide special education and related services to this group of children in accordance with K.A.R. 91-40-43 through 91-40-48. Each board also shall provide services to gifted children who reside in the district and are enrolled in a private school.

(b) The parent of an exceptional child may request that the child be provided special education and related services in accordance with K.S.A. 72-5393 and amendments thereto.

(c) A board shall not be required to provide any special education or related services to a private school child unless one of the following conditions is met:

(1) The child is a member of a group of private school children that has been designated to receive special education and related services in accordance with the provisions of K.A.R. 91-40-43 through 91-40-48.

(2) The parent of the child requests that services be provided to the child in accordance with K.S.A. 72-5393 and amendments thereto.

(d) Except as otherwise provided in K.S.A. 72-5393 and amendments thereto, a private school child shall not be entitled to receive any special education or related service that the child would be entitled to receive if enrolled in a public school, and a private school child may receive a different amount of special education or related services than a child with a disability who is enrolled in a public school.

(e) Each board shall ensure that the special education and related services provided to private school children are provided by personnel who meet the same standards as the standards for public school personnel, except that private school teachers who provide services to private school children shall not be required to be highly qualified under the federal law.

K.A.R. 91-40-45. Services plan or IEP

(a) Each board shall develop and implement a services plan for each private school child who meets both of the following criteria:

(1) The child is a member of the group of private school children that has been designated to receive special education and related services under the provisions of K.A.R. 91-40-43;and

(2) The child is not receiving special education and related services by request of the child's parent under the provisions of K.S.A. 72-5393 and amendments thereto.

(b) A board shall ensure that the services plan for each private school child meets each of the following requirements:

(1) The services plan shall describe the specific special education and related services that the board will provide to the child, based upon the services the board has determined that it will make available to private school children under the provisions of K.A.R. 91-40-43.

(2) The services plan shall be developed, reviewed, and revised, as necessary, in the same manner in which IEPs are developed, reviewed, and revised under this article, except the board shall ensure that a representative of the child's private school is invited to attend, or to otherwise participate in, each meeting held to develop or review the child's services plan.

(3) The services plan shall meet the requirements of K.A.R. 91-40-18 with respect to the services that the child is designated to receive.

(c) Each board shall develop, review, and revise, as necessary, in accordance with this article of regulations, an IEP for the following children:

(1) Each private school child whose parent requests special education and related services under the provisions of K.S.A. 72-5393 and amendments thereto; and
(2) each identified gifted child residing in the school district and enrolled in a private school whose parent elects to have the child receive special education and related services from the board.

4. Location of Services for Children with a Services Plan

Under Federal law, the location where services will be provided should be determined in consultation with appropriate representatives of private schools and with representatives of parents of children with disabilities enrolled in private schools. The location of services will impact the amount to be expended to provide services to children with disabilities in private schools. There are options available for the location of the delivery of services to children with disabilities in private schools. Some of the services may be provided in public schools throughout the district or at a central location in the district. The public school district may decide that only some services will be provided at the private school setting. When services are provided in the private school, they may take place at a central location rather than each attendance site.

However, while permitting services to be provided at a parochial school site, the federal law does not require that services be provided in that setting. An offer to provide services at the public school site generally meets a school district's obligations, even if parents refuse the services at that site.

5. Transportation

Federal law requires transportation to be provided to a child with a disability in a private school if transportation is necessary for the child to benefit from or participate in the services provided. State law requires the school to provide transportation to and from the public school if the services are provided at the public school site. Again, the public school is not required to provide transportation outside of its boundaries. Transportation costs may be figured into the proportionate amount of funds expended for services.

K.A.R. 91-40-47. Transportation for exceptional children enrolled in private schools
(a) Except as otherwise provided in this regulation, each board, to the extent necessary for an exceptional child to benefit from, or to participate in, special education and related services provided to the child by the board, shall furnish or provide for the following transportation services for the child:
(1) Transportation from the child's private school or home to the site at which the child is provided special education and related services; and
(2) transportation from the site at which special education and related services are provided to the child to the child's private school or the child's home, as appropriate.
(b) Except as provided in K.S.A. 72-8306 and amendments thereto, a board shall not be required to furnish or provide transportation from an exceptional child's home to the child's private school.
(c) A board shall not be required to furnish or provide transportation services outside of its school district.

6. Restrictions On Use of Federal and State Funds for Private Schools

Schools may not use funds to:

- create separate classes organized on the basis of school enrollment or religion of children if: (a) The classes are at the same site; and (b) The classes include children enrolled in public schools and children enrolled in private schools ;
- finance the existing level of instruction at a private school or otherwise benefit the private school;
- Meet the needs of the private school or the general needs of children enrolled in the private school

Additionally, Federal and State regulations restrict the use of property, equipment, and supplies in serving children with exceptionalities in private schools. Property, equipment, or supplies used on private school premises for providing special education services must remain in the control of the public school and be removed from the private school when they are no longer needed to provide the services. They must also be removed to avoid unauthorized use. Federal funds cannot be used for repair, remodeling, or construction at a private school site. Therefore, State regulations require that public schools ensure that any equipment or supplies be placed in a private school in a manner that allows removal without the necessity of remodeling the private school.

K.A.R. 91-40-48. Use of funds and equipment

(a) Subject to subsection (d), an agency may use state and federal funds to make personnel available at locations other than at its facilities to the extent necessary to provide special education and related services to exceptional children enrolled in private schools, if those services are not normally provided by the private schools.

(b) Subject to subsection (d), an agency may use state and federal funds to pay for the services of an employee of a private school to provide special education and related services if both of the following conditions are met:

(1) The employee performs the services outside of the employee's regular hours of duty.

(2) The employee performs the services under public supervision and control.

(c) (1) Subject to subsection (d), an agency may use state and federal funds to provide for the special education and related services needs of exceptional children enrolled in private schools, but shall not use those funds for either of the following purposes:

(A) To enhance the existing level of instruction in the private school or to otherwise generally benefit the private school; or

(B) to generally benefit the needs of all students enrolled in the private school.

(2) Each agency shall ensure that special education and related services provided to exceptional children enrolled in private schools are provided in a secular and nonideological manner.

(d) An agency's authority to use federal funds under this regulation shall be limited to providing special education and related services to children with disabilities.

(e) An agency shall not offer or maintain classes that are organized separately on the basis of public or private school enrollment or the religion of the students, if the classes offered to students are provided at the same site and the classes include students enrolled in a public school and students enrolled in a private school.

(f) (1) An agency shall keep title to, and exercise continuing administrative control over, all property, equipment, and supplies that are acquired by the agency to be used for the benefit of exceptional children enrolled in private schools.

(2) An agency may place equipment and supplies in a private school, to the extent allowed by law, for the period of time needed to provide special education and related services to exceptional children enrolled in the school.

(g) (1) An agency shall ensure that any equipment or supplies placed in a private school are used to provide special education and related services and can be removed from the private school without the necessity of remodeling the private school.

(2) An agency shall remove its equipment or supplies from a private school if either of the following conditions exists:

(A) The equipment or supplies are no longer needed to provide special education or related services to students enrolled in the private school.

(B) Removal is necessary to avoid unauthorized use of the equipment or supplies.

(h) An agency shall not use public funds to construct, remodel, or repair any private school facility.

F. MEDIATION AND DUE PROCESS RIGHTS FOR PRIVATE SCHOOL CHILDREN

Parents of children voluntarily enrolled in private schools and receiving services from the district of residence in accordance with an IEP, under State law, may utilize the formal complaint process, request mediation or initiate a due process hearing on any matter concerning the child's special education.

Parents of children voluntarily enrolled in private schools and receiving services under a Services Plan cannot seek due process or mediation regarding the school's alleged failure to meet the requirement of providing services to these children. Rather, the parents may request a meeting to review and revise the child's Services Plan, or utilize the State formal complaint process. However, parents can request mediation or due process if the parents believe the school has failed to properly evaluate and identify their child.

Regulations addressing due process, mediation, and formal complaints are found at 34 C.F.R. 300.140 and K.A.R. 91-40-46:

K.A.R. 91-40-46. Mediation and due process rights of private school children. .

(a) (1) The parent of a private school child may request mediation or initiate a due process hearing as authorized under this article, if the parent believes that a board has failed to properly identify and evaluate the parent's child, in accordance with K.A.R. 91-40-42 (a).

(2) Each due process complaint by the parent of a private school child shall be filed with the board of education of the school district in which the private school is located.

The parent of the child shall provide a copy of the complaint to the state board of education.

(b) The parent of a private school exceptional child who is receiving special education and related services in accordance with an IEP may request mediation or initiate a due process hearing as authorized under this article on any matter concerning the child's education.

(c) The parent of a private school child with a disability who is receiving special education and related services under a services plan shall not be entitled to request mediation or to initiate a due process hearing on any matter concerning the child's education, but shall be entitled to take either, or both, of the following actions:

(1) Request that a meeting be conducted, in accordance with K.A.R. 91-40-45 (b), to review and revise the child's services plan; or

(2) file a complaint with the state board, in accordance with K.A.R. 91-40-51.

QUESTIONS AND ANSWERS ABOUT PRIVATE SCHOOLS

1. Must the public school use its Federal funds to meet the requirement that a proportionate share of funds be spent on providing services to parentally placed children in private schools?

Yes. Each LEA is required to spend a minimum amount of its subgrant under Part B of the IDEA for children with disabilities placed by their parents in private schools. State and local funds may be used to supplement, but not supplant, the LEA's proportionate share of Federal funds required to be expended on children with disabilities placed by their parents in private schools.

2. How is the public school to meet the requirement to "consult with representatives of private school children and representatives of parents of private school children with disabilities" regarding various situations identified in the law?

The public school district must consult annually with representatives of private schools and representatives of parents of voluntarily placed private school children with disabilities regarding the provision of special education and related services needs of children with disabilities enrolled in the private schools located within the district boundaries. This consultation must be conducted in a timely and meaningful way, and provide a genuine opportunity for the representatives of the private schools and representatives of parents of children with disabilities in private schools to express their views regarding child find, child count, how the proportionate share of funds will be used to deliver services and what services will be delivered.

To meet the consultation requirement, the public school could propose a plan to meet the requirements of the law and request input from the appropriate representatives, or the school could invite representatives to attend a meeting to provide input into the plan.

3. What qualifications must the staff meet that provides special education services when the public school serves a parentally placed child in a private school?

The special education services provided to parentally placed private school children with exceptionalities must be provided by personnel meeting the same standards as personnel providing such services in public schools. The public school may use State and Federal funds to make personnel available at the private school to the extent necessary to provide special education and related services to children enrolled by their parents in private schools, if those services are not normally provided by the private schools. However, if the services are provided by the private school teachers, the private school teachers cannot be required to be highly qualified as defined in the Federal law. The public school may use special education funds to pay for the services of an employee of a private school to provide special education and related services for children if both of the following conditions are met:

a. The employee performs the services outside of the employee's regular work hours; and
b. The employee performs the services under public supervision and control.

4. When an IEP specifies that the child be served at a private school and the child's IEP requires services for emotional disturbance and speech/language, yet the private school does not provide speech/language services, what must the school do to address the speech/language services?

Under State law when an IEP is developed the public school is required to provide all services indicated on the IEP. Therefore, speech/language services could be provided at the private school either by the public school staff or contracted staff. However, when the IEP team decides that the placement should be at the private school because of the serious behavioral issues that need to be addressed, it may also decide that for a period of time, the speech/language needs do not have the same priority as the behavior needs. Therefore, the team may, with the consent of the parents, remove the speech/language service from the IEP, possibly including a timeline for meeting again to consider the need to add the service back into the IEP, depending upon the needs of the child.

5. If a child in private school is evaluated and found to be a child with a disability and the parents refuse services from the public school, is the public school obligated to reevaluate the child in 3 years?

This is a child who would be included in the private school count of children with disabilities (found eligible but not receiving services). Because this is an identified child with a disability, the legal provisions regarding reevaluation apply. Therefore, at the end of 3 years, a reevaluation is needed. The public school district would provide Prior Written Notice and request consent from the parents to conduct a reevaluation.

6. Are children who are voluntarily placed by their parents in private schools entitled to special education services in Kansas?

The Kansas special education law and regulations, if parents request special education services for their child, the child is entitled to receive all of the services specified in the child's IEP (FAPE), and parents have all due process rights under Federal and State law. If the services are provided at the public school, the child is entitled to services equal to all other children receiving special education at the public school. If the services are provided at the private school, the child is entitled to services up to the average cost of providing the same service in the public school.

Federal law is clear that children enrolled in a private school by their parents have no individual entitlement to special education and related services. If children are part of a group agreed upon to receive services, they may receive the services offered by the public school under a services plan, but there is no requirement for any particular child to receive any services.

7. Who is responsible for the IEPs of children with disabilities who are placed in private schools by a public school IEP team?

Before placing a child with a disability in a private school or facility, the public school must conduct a meeting and develop an IEP. The IEP team may place a child in a private school as the result of the initial IEP meeting or as the result of a meeting to review an existing IEP. However, at the meeting in which a child is placed in a private school, the public school must ensure that a representative of the private school is present at the meeting or participates in the meeting through other means, such as individual or conference telephone call. After the initial IEP meeting, subsequent meetings to review the IEP may be conducted by the private school. A representative of the public school must attend these subsequent IEP meetings. Although the services are provided at the private school, the public school remains responsible for assuring that the IEP is implemented.

8. If services are provided in a parochial school, is there still a requirement to remove religious objects/symbols?

No, the law does not make any such requirements. The Kansas Attorney General's ruling of 1981 has been superseded by IDEA. State law allows for services to be provided at either the public or private school, but forbids the provision of special education and related services "in connection with religious courses, devotional exercises, religious training, or any other religious activity." The site where services are provided must be determined by the school district in consultation with the parents and private school officials.

9. Is a parentally placed child with an IEP in a private school entitled to both general education and special education services from the public school?

No. Public schools are required to provide special education and related services, but not to provide classes in the general curriculum for the private school child at the public school. For example, if parents request that in addition to receiving physical therapy at the public school, their child also be allowed to take physics, the public school is not obligated to allow the child to take physics. Instead, the child would be required to enroll in the public school as a full-time child in order to receive general education services.

10. Are children enrolled in or placed in private schools required to take the State Assessment?

If a child is placed in a private school by the public school, the child is required to take the appropriate State Assessment. If the child has been enrolled in the private school by the parents, the child would follow the requirements of the private school. That may mean that they would not take the State Assessment if the private school was not in the Kansas Quality Performance Accreditation system.

11. If a child in a private school moves from one private school to another and the Services Plan has more services than offered by the new public school providing the special education services, what happens to the child's services?

The new public school may conduct a meeting to review and revise the Services Plan. Unless the parents request all of the services identified by the IEP team, the public school is not required to provide services other than those agreed upon in consultation with the appropriate representatives of private schools and representatives of parents of children with disabilities enrolled in private schools. However, that does not prohibit the new public school from providing the services if it chooses to.

12. What is the obligation of the public school that does not have any private schools within its jurisdiction?

Under State law, the parent of a resident exceptional child, who is attending a private school located outside the district of residence, may request special education and related services. In that case the school of residence must develop an IEP. However, the district of residence is not required to provide any special education or related services outside of its district boundaries.

13. Who makes the final decision regarding the location of the delivery of special education or related services to an exceptional child enrolled in a private school?

The public school, in consultation with the private school and the parents, makes the final decision about the location of the delivery of services. Ultimately, the decision rests with the public school.

14. Must a general education teacher in the private school participate in developing, reviewing, and revising a child's IEP or Services Plan?

A meeting to develop, review, and revise an IEP or a Services Plan must include all of the participants required for an IEP team meeting, including at least one general education teacher of the child (if the child is or may be participating in the general education environment). The general education teacher in the private school would meet the requirement for a general education teacher.

The public school must also ensure that a representative of the private school attends each meeting to develop or revise a child's Services Plan. If the representative cannot attend, the public school must use other methods to assure a representative's participation, including individual or conference telephone calls. The participation of the child's private school teacher could meet this requirement.

15. Are children who are receiving special education or related services from the public school with a Services Plan considered to be enrolled in the public school and counted on the public school's September 20 enrollment count?

Yes. All parentally placed children in private school receiving services with either an IEP or a Services Plan are considered to be enrolled in the public school for special education services and are to be counted on the public school's September 20 enrollment count.

Also, all children for whom the school provides services through a contract with a private school or other agency or institution are considered to be enrolled in the public school and are counted on the public school's September 20 enrollment count.

16. What happens to the proportionate share of funds when the only child in a private school receiving services moves, and there are no more identified children to utilize the funds?

The amount of funds may be carried over for one additional year. If it appears there are no children in a private school in need of special education or related services, the remaining funds may be reallocated.

17. What happens when the district where the private school is located has used its entire proportionate share of funds and a nonresident child is found to be a child with a disability and the parent requests services?

The district where the private school is located is not obligated to provide any services to a nonresident child with a disability once it has expended the required proportionate share of funds. The parent of the nonresident child would have to go to the district of residence to request services. The district of residence can offer services in the resident district, but if the parent refuses, the resident school has met its obligation to make FAPE available.

18. Why might the child count of children with disabilities enrolled by their parents in private schools be different from the annual child count that is reported to the State and Federal departments of education?

The district of residence is required to locate, evaluate and identify children with disabilities enrolled in private schools located within its boundaries. Parents of children voluntarily enrolled in private school may choose to not accept special education and related services. The district would not be found in violation of the law. Once a public school has expended the entire federal proportionate share of funds it has no obligation to provide special education and related services to nonresident children attending a private school located within the district boundaries. These nonresident children would go to the district of residence to request services. If the parent does not accept services being offered at the district of residence these children may not be receiving any services, but would be included in the child count. Additionally, any resident child whose parent refuses services would also be included in the child count. Therefore, any child identified as a child with a disability, even though not receiving special education services, would be included in the child count of children with disabilities enrolled by their parents in private schools.

19. When would a district use a Services Plan and not an IEP for services to parentally placed private school children?

A Services Plan would be used when the district where the private school is located is providing services according to the agreement from the consultation with representatives of private schools and representatives of parents of children with disabilities attending private schools using its proportionate share of funds to serve a nonresident child.

When a parent is a resident of the district and requests special education services the district must offer an IEP and make FAPE available. The parent may refuse any or all of the services. The parent's refusal should be documented by the district. One way to document the offer of FAPE by the district and the refusal by the parent would be to provide the parent with Prior Written Notice and ask for consent for all of the services. The parent may consent to the services they are accepting.