



Overview

LEAs have an obligation to locate and evaluate students with disabilities enrolled by their parents in private schools located within the public-school district, and to spend a proportionate share of federal special education (Individuals with Disabilities Education Act or IDEA) grant funds providing equitable services for these students.

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. 72-3461(c)). The definition of private schools includes parochial schools. The definition of a private school in Kansas does not include any educational program prior to kindergarten. Therefore, children age 5 or under who are enrolled in a private preschool program would not be part of the child count to determine the proportionate share of federal funds. This means that the private school child count begins with students who have attained the age of 5 years and who are enrolled in a private school kindergarten.

LEA requirements

Each LEA must comply with the following requirements on an annual basis:

1. **Timely and meaningful consultation** [34 CFR §300.135](#): Prior to other required activities, LEAs must invite and consult with private school representatives, and representatives of parents of eligible privately-enrolled students educated in the district. Topics that must be discussed are: child find process, determination of proportionate share, consultation process, provision of special education and related services, and provision of a written explanation by the LEA regarding services (in the event of disagreement between the district and private school officials). Although the initial consultation must occur prior to other required activities, additional consultation may occur.
2. **Written affirmation following consultation** [34 CFR §300.134](#) The LEA must obtain written affirmation confirming that timely and meaningful consultation has occurred, signed by the private school representatives. The written affirmation is confirmation that consultation has occurred—not that there is agreement among meeting participants. If such representatives do not provide such affirmation within a reasonable period of time, the LEA shall forward the documentation of consultation process to the Kansas State Department of Education (KSDE).

3. **Child find** [34 CFR §300.131](#). Each LEA must annually conduct child find to locate all children with disabilities attending private schools in the jurisdiction of the LEA without regard to where the children reside, to determine the proportionate share of Part B funds, and provide equitable services to parentally-enrolled private school children with disabilities who attend private schools located in the LEA. This child find and count would include parentally-enrolled children attending private schools within the jurisdiction of the LEA who are served by another district. This requirement applies to conducting child find activities and evaluations and determining eligibility for these students. It also applies to determining the proportionate share of federal funds allocated to providing services to parentally-enrolled private school children.
4. **Evaluation and determination of eligibility** [34 CFR §300.131](#) LEAs must evaluate and determine whether privately-enrolled students educated within the it's boundaries are eligible for special education services. Districts may conduct their own evaluation or may accept a prior evaluation if the information is comprehensive and current.
5. **Child count and proportionate share calculation** [34 CFR § 300.133\(c\)](#) According to state regulation 91-40-42(b)(1), local school districts shall annually conduct a count of children with disabilities attending private schools (elementary and secondary) located within the district. This count, at the discretion of the local board, must be conducted on the last Friday of October or on December 1 each year. This count includes all children determined to have a disability that are parentally placed in private schools regardless of whether or not they are receiving special education or related services or whether the child lives within the jurisdiction of the LEA.
6. **Proportionate share expenditure.** [34 CFR §300.133](#) LEAs determine which services to provide following consultation with representatives of the private schools and parent representatives of eligible private school students. State and local funds may be used to supplement but not supplant the required expenditure of federal funds. LEAs must document expenditures and other activities related to IDEA and proportionate share. Expenditures to serve parentally placed private school children who are 'gifted only' may not be used toward meeting this requirement.
7. **Development of services plans** [34 CFR §300.137\(c\)](#). LEAs are responsible for ensuring that each parentally-placed private school student with a disability who has been designated to receive proportionate share services has a services plan describing the specific special education services that the LEA will provide, including where and when the district will provide services to the student
8. **Providing or contracting for services.** [34 CFR §300.137\(b\)](#) and [34 CFR §300.139\(b\)](#) In expending federal IDEA Part B funds, LEAs may provide services at the private school, at a public or neutral site convenient to the private school, on public school grounds, or contract for the provision of services at an appropriate site, ensuring that they provide transportation to the student.

FAQs

- 1. *Can the district give the proportionate share funds to the private school to provide equitable services?*** No. The control of funds used to provide special education services and the control of materials, equipment, and property purchased with those funds is the sole responsibility of the public-school entity. With regard to personnel, [34 C.F.R. § 300.142](#) states that the district “may use funds available under special education grants to pay for the services of an employee of a private school to provide services...if the employee performs the services outside of his or her regular hours of duty, and the employee performs the services under public supervision and control.”
- 2. *Can families receive some of their services at their private school when funded by proportionate share and the rest of their services at the local public school?*** Yes, the district can provide services using federal funds to students at the location of the private school, in another location, or at the public school. The terms of service and their location are determined after consultation.
- 3. *What happens if the district does not use all of the proportionate share funds by the end of the fiscal year for which Congress appropriated the funds?*** If a LEA has not expended its proportionate share minimum obligation of federal funds for either grant by the end of the fiscal year, the LEA must obligate and carry over the remaining funds for special education and related services for privately-enrolled students for one year.

What if the district cannot spend the proportionate share funds after the one-year carry-over expires? Districts should make every effort to spend the proportionate share funds each year, including any carry-over from the prior year. If, after the carry-over period, the district is unable to expend the entire proportionate share of funds due to exceptional circumstances, and assuming the district has complied with all requirements in [34 C.F.R. §§ 300.129-300.144](#), the district may use the unexpended funds—at the end of the period during which the funds may be spent on parentally-placed private school children—to pay for other allowable Part B expenditures. See [2011 U.S. Dept. of Educ. Q&A](#) at Question H-5. The LEA should document and retain records of all efforts made, even if unsuccessful, to spend the proportionate share funds.

For more information, contact:

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