

Special Education Services To  
Children With Disabilities  
(Ages 3-21)  
Enrolled by Their Parents in  
Nonpublic Schools



**Technical Assistance Document**  
Nebraska Department of Education  
Special Populations  
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The Nebraska Department of Education, Special Population Office, gratefully acknowledges the work of the stakeholder members in developing a plan for the provision of special education services to parentally-placed nonpublic school students.

**Services Education Services To  
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# INTRODUCTION

## Background

The final regulations for the reauthorized Individual with Disabilities Education Act (IDEA) 2004 were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006. These regulations contain a number of significant changes from the existing law and regulations.

The regulations now require that public school districts, after timely and meaningful consultation with nonpublic school representatives and nonpublic school parent representatives, conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending nonpublic schools located is within the public school district's boundaries. The requirements make clear the obligation to spend a proportionate amount of IDEA Part B funds to provide special education services to children with disabilities enrolled by their parents in nonpublic schools. Additionally, the regulations require that children with disabilities parentally-placed in a nonpublic school be served by the public school district within which the nonpublic school is located. Other key changes relate to a consultation process, calculation of the proportionate share, and standards applicable to personnel providing equitable services.

In response to the requirements of IDEA 2004 the Nebraska Department of Education, Special Populations Office formed a stakeholders taskforce to discuss and make recommendations on how best to merge the requirements of federal laws, and Nebraska's state law. The stakeholders engaged in extensive discussions around the pros and cons of three service delivery models. These models were: 1) change Nebraska state statute from FAPE to equitable services for all children with disabilities parentally-placed in a nonpublic school; 2) revise Nebraska state statute definition of residency for nonpublic school children and provide FAPE for all children with disabilities parentally-placed in nonpublic schools; 3) provide a dual delivery system in which resident children with disabilities parentally-placed in a nonpublic school within their school district boundaries receive FAPE; and nonresident children with disabilities parentally-placed in a nonpublic school would be eligible to receive equitable services from the school district within which the nonpublic school is located, **or** parents may request the provision of FAPE from the child's school district of residence.

The dual delivery system was recommended by the stakeholders, as this system provided harmonization of both federal law and state law and provided flexibility for nonresident children with disabilities parentally-placed in a nonpublic school. Nonresident parentally-placed nonpublic school children with disabilities have two choices: 1) receive equitable services from the public school district within which the nonpublic school is located; **or** 2) request the provision of a free and appropriate public education (FAPE) from the child's resident public school district.

Resident children with disabilities parentally-placed in a nonpublic school continue to be eligible for the provision of a free and appropriate public education (FAPE) from the school district where the child resides.

This dual delivery system aligns with Nebraska statute which requires public school districts to make the provision of a free appropriate public education (FAPE) available for all resident children.

## **Purpose**

The purpose of this technical assistance document is to provide guidance and interpretation of the requirements of IDEA 2004 and 92 NAC 51- 015.03.

It is not intended to be a replacement for careful study of IDEA 2004 and 92 NAC- 51 or Rule 51 (Regulations and Rules for Special Education Programs).

## **For Additional Information**

For more information, or if you have questions about the provision of special education services for children with disabilities parentally-placed in nonpublic schools, please contact your district's regional representative at the Special Populations Office in the Nebraska Department of Education. Telephone 402.471.2471. This document is also available on the Nebraska Department of Education, Special Populations website [www.nde.state.ne.us/SPED/sped.html](http://www.nde.state.ne.us/SPED/sped.html)

## **Overview**

### **Children With Disabilities Parentally-Placed In Nonpublic Schools (Ages 3-21), Free Appropriate Public Education (FAPE) Is Not At Issue**

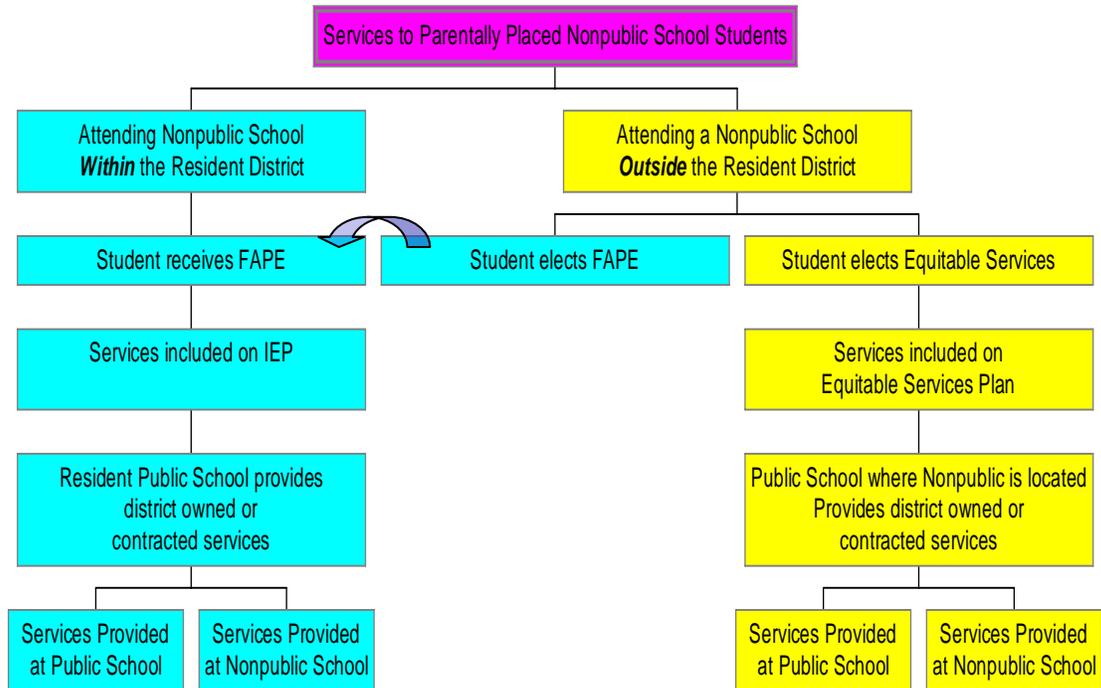
The final IDEA 2004 regulations clarify eligible children with disabilities parentally-placed in a nonpublic school means “children with disabilities placed by their parents in a nonpublic, including religious schools, home schools, and schools or facilities, which meet the definition of “elementary school” or “secondary school”. “Elementary school” is defined as a nonprofit institutional day or residential school, including a public elementary school that provides elementary education, as determined by state law. “Secondary school” is defined as a nonprofit institutional day or residential school, including a secondary school that provides secondary education, as determined by state law. Preschool children (ages 3-5) attending preschools which are part of an approved or accredited elementary school are also included under IDEA 2004 regulations of eligible children with disabilities parentally-placed in nonpublic schools.

This document refers only to eligible children (ages 3-21) with disabilities parentally-placed in nonpublic schools, including religious schools, home schools, or facilities that meet the definition of elementary school or secondary school, and FAPE is not at issue.

#### **The public school district within which the nonpublic school is located is responsible for:**

- Child Find
- Taking a child count of nonpublic children with disabilities
- Calculation of proportionate share
- Consultation with Nonpublic schools and determination of equitable services
- Provision of FAPE for Resident children (ages 3-21) with disabilities parentally-placed in a nonpublic school
- Provision of equitable services as determined through the consultation process for Nonresident children (ages 3-21) with disabilities parentally-placed in a nonpublic school.

# What Does It Look Like



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Parentally-placed children with disabilities attending a nonpublic school which is located outside of his/her resident district:

- ◆ May elect to receive equitable services from the public school within which the nonpublic school is located (services plan)

**OR**

- ◆ May elect to receive FAPE from the public school district of which they are a resident (IEP)

Parentally-placed children with disabilities attending a nonpublic school which is located within his/her resident district:

- ◆ Are entitled to receive the provision of FAPE from his/her resident public school district

# Consultation

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Public school districts must at least annually conduct a timely and meaningful consultation meeting with parent representatives and officials of nonpublic schools, including home schools, which are within their district's jurisdiction. The purpose of the consultation meeting is to provide an opportunity for nonpublic school representatives and parents to participate and provide input into the design and development of special education and related services for children with disabilities attending nonpublic schools.

Timely and meaningful consultation is an ongoing process and should address the following topics:

- a. The child find process, including how parentally-placed nonpublic school children suspected of having a disability can participate equitably; and how parents, teachers, and nonpublic school officials will be informed of the process.
- b. The determination of the proportionate share of federal funds available to serve children with disabilities parentally-placed in nonpublic schools including the determination of how the proportionate share of those funds was calculated.
- c. The consultation process among the public school district, nonpublic school officials, and nonpublic school parent representatives, including how the process will operate throughout the school year to ensure that these children with disabilities can meaningfully participate in special education services.
- d. A discussion of how, where, and by whom special education services will be provided, including a discussion of: 1) the types of services, including direct services and alternative service delivery mechanisms; 2) how special education services will be apportioned if the proportionate share federal funds are insufficient to serve all eligible children with disabilities parentally-placed in nonpublic schools; and 3) how and when those decisions will be made.
- e. How, if the school district disagrees with the views of the nonpublic school officials on the provision of services or the types of services (whether provided directly or through a contract), the school district will provide to the nonpublic school officials a written explanation of the reasons why the public school district chooses not to provide services directly or through a contract.

Upon conclusion of a consultation meeting with nonpublic school representatives and parent representatives, the school district must obtain written affirmation signed by the representatives of the participating nonpublic schools.

If representatives of the nonpublic schools do not provide written affirmation within a reasonable period of time, the school district must forward documentation of the consultation process to Nebraska Department of Education, Special Populations.

A nonpublic school official has the right to submit a complaint to the Nebraska Department of Education that the school district did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the nonpublic school official.

## Questions and Answers-Consultation

**1. Which nonpublic schools should the public schools include in the consultation process?**

The consultation process should include all nonpublic schools which are within the jurisdiction of the public school district that meet the definition of an elementary or secondary school.

**2. Must representatives of home schools and preschools be invited to participate in the consultation process?**

Yes.

**3. Can a school district decide only to provide services for resident children with disabilities parentally-placed in a nonpublic school?**

The proportionate share of federal funds must include the provision of special education services for all children with disabilities parentally-placed in nonpublic schools located within the district. However, through the consultation process it may be decided that only certain services will be available, and some nonresident children with disabilities may not receive some or any of the services he/she would receive if services were being provided by the resident school district.

The school district must make available a free appropriate public education (FAPE) for all resident children with disabilities parentally-placed in a nonpublic school.

**4. Is it possible that a nonresident child with disabilities parentally-placed in a nonpublic school will not receive any services?**

Yes, based on the consultation process, and in light of available proportionate share funding, it could be determined that only certain special education services are available to nonresident nonpublic parentally-placed children. As a result, some nonresident children with disabilities parentally-placed in a nonpublic school may not receive the services necessary to meet their special education needs.

If the services for a nonresident child are not available, a services plan would not be written for the child. Parents of a nonresident child have the option to request a free appropriate public education (FAPE) from the child's resident public school district.

**5. When should the public school district conduct the consultation meeting?**

The consultation meeting should be held no later than June 30<sup>th</sup>. The consultation meeting must be held prior to the district's design and development of special education services for the next school year. Schools districts may combine the consultation meeting with other NCLB and Title consultation meetings.

**6. What are some ways for public school districts to invite parents to consultation meetings?**

Acceptable methods include, but are not limited to: send letters to known parents; place a public meeting notice in the newspaper; request nonpublic schools to include consultation meeting information in their school/parent newsletter; meeting flyers; posters; local radio station announcements, etc.

**7. Who makes the final decision on what services will be available for children with disabilities parentally-placed in nonpublic schools?**

After timely and meaningful consultation with nonpublic schools representatives and representatives of parents, the school district is responsible for making final decisions about all aspects of the services to be provided to children with disabilities parentally-placed in nonpublic schools.

However, if the school district disagrees with the views of the nonpublic school officials on the provision of services or the types of services, whether provided directly or through a contract, the school district must provide the nonpublic school officials a written explanation of the reasons why the district chose not to accept the recommendations of the nonpublic school officials.

**8. Are there any further requirements of the public school district if no nonpublic school representative or nonpublic parent representatives attend the consultation meeting?**

No, as long as the public school has made reasonable efforts to inform representatives of nonpublic schools and parent representation of the consultation meeting and has documentation of its efforts to provide a timely and meaningful consultation meeting, there are no further requirements. Sample consultation meeting notices are provided in this document.

**9. What documentation of the consultation process is required?**

After consulting with representatives of nonpublic schools, the school district must obtain a written affirmation, signed by nonpublic school representatives who attended the meeting. However, if nonpublic school representatives, do not provide signed affirmation within a reasonable period of time, the school district must forward documentation of its consultation process to the Nebraska Department of Education, Special Populations Office. The school district must also send a description of efforts to consult with the representatives of nonpublic schools.

**10. What are some suggestions for documentation that the district has provided timely and meaningful consultation?**

Districts may keep: copies of invitation letters, newspaper notice, sign-in sheets or other documentation of consultation meeting participants; and meeting agendas describing each of the topics or issues discussed at the meeting.

**11. Once the consultation plan is completed, does the plan need to be submitted to the state?**

No, school districts should maintain documentation of the consultation meeting and the plan. School districts are not required to submit the documentation to Nebraska Department of Education, Special Populations Office unless the district is unable to obtain written affirmation from nonpublic representatives.

**Sample Letter**

**Nonpublic School Consultation Meeting Invitation**

Dear (NAME):

In accordance with the requirements of 92 NAC 51, this letter is to invite you to a meeting where you will have an opportunity to participate in the discussion of a plan for child find and the provision of special education services to children with disabilities who attend your nonpublic school during the 200X-XXXX school year. This meeting will take place at (LOCATION) starting at (TIME) on (DATE).

As you may know, a public school district is required to utilize a portion of its Federal Part B special education funds in order to provide children with disabilities parentally-placed in nonpublic schools which are within the school district's jurisdiction the opportunity to participate in special education services offered by the public school district. As part of this process, the public school district will consult with nonpublic school representatives regarding special education services for the coming school year and to afford you the opportunity to offer ideas and input.

In addition to meeting with representatives of nonpublic schools within the district, we would appreciate your assistance in identifying parents who may wish to attend this meeting and offer their input. In order to provide reasonable advance notice to such parents, we would appreciate receiving names and contact numbers for such parents by no later than (DATE \_\_\_\_\_).

We thank you for your willingness to participate in this process. If you have any questions or concerns pertaining this meeting please feel free to call (CONTACT NAME AND NUMBER).

Sincerely,

( Public School Official)

## **SAMPLE PUBLIC NOTICE**

On (DATE) at (TIME), a meeting conducted by (DISTRICT NAME) will take place at (LOCATION). The purpose of the meeting will be to provide an opportunity for parents and representatives of nonpublic schools to participate in the development of a plan for providing special education services to children with disabilities who attend nonpublic schools and home schools which are within the \_\_\_\_\_ district for the 200x-200x school year. Parents of a home-schooled child or a child attending a nonpublic school who has been or may be identified with a disability and attend a nonpublic school within the boundaries of (DISTRICT NAME), are urged to attend. If you have further questions pertaining to this meeting, please contact (CONTACT NAME) at (NUMBER).

# Consultation Plan Checklist

**Requirements for Consultation under the Individuals with Disabilities Education Act as reauthorized in 2004.** The public school district shall consult with nonpublic school representatives and representatives of parents of children with disabilities parentally-placed in a nonpublic school during the design and development of special education and related services for the children regarding:

\_\_\_\_\_ **Child Find:** How parentally-placed nonpublic school children suspected of having a disability can participate equitably, including how parents, teachers, and nonpublic school officials will be informed of the process; restrictions on sharing information;

\_\_\_\_\_ **Proportionate Share Calculation:** \$\_\_\_\_\_ How the proportionate share of IDEA Part B and IDEA Preschool federal funds is calculated including the amount of the proportionate share funds available for the ensuing school year;

\_\_\_\_\_ **Consultation Process:** How the consultation process will operate throughout the school year to ensure that children (ages 3-21) with disabilities parentally-placed in nonpublic schools identified through the Child Find process can meaningfully participate in special education and related services;

\_\_\_\_\_ **Special Education and Related Services:** How, where, and by whom special education and related services will be provided for children (ages 3-21) with disabilities parentally-placed, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such equitable services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; (resident children-FAPE, nonresident children equitable services); and

\_\_\_\_\_ **Disagreement:** How, if the public school district disagrees with the views of the nonpublic school officials on the provision of services or the types of services, whether provided directly or through a contract, the public school district shall provide to the nonpublic school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract.

**Documentation Required:** Each school district shall maintain in the district's records a written affirmation signed by officials of each participating nonpublic school that the consultation regarding special education and related services has occurred.

If nonpublic school officials do not provide such affirmation within a reasonable time, the public school district shall forward the documentation that such consultation has taken place to the Special Populations Office, Nebraska Department of Education.







**Sample II**

(School District Name)  
Special Education Services

**WRITTEN AFFIRMATION OF CONSULTATION**

Date of Consultation\_\_\_\_\_

It is affirmed that the nonpublic school consultation process included discussion of:

- The child find process and how children (ages 3-21) with disabilities parentally-placed in nonpublic schools suspected of having a disability can participate equitably, including how parents, teachers, and nonpublic school officials will be informed of the process;
- The determination of the proportionate amount of federal funds available to serve children (ages 3-21) with disabilities parentally-placed in a nonpublic school, including the determination of how the amount was calculated;
- How the consultation process will operate throughout the school year to ensure that children (ages 3-21) with disabilities parentally-placed in nonpublic schools identified through the child find process can meaningfully participate in special education services;
- How, where, and by whom special education services will be provided for children with disabilities (ages 3-21) parentally-placed in nonpublic schools, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such equitable services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made;
- How, if the public school district disagrees with the views of the nonpublic school officials on the provision of equitable services or the types of equitable services, whether provided directly or through a contract, the public school district shall provide to the nonpublic school officials a written explanation of the reasons why the school district chose not to provide equitable services directly or through a contract.

Signatures of Nonpublic School Representative Officials and Parents in attendance:

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Signature	nonpublic school/parent	Date
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## **Child Find**

The school district must locate, identify, and evaluate all children with disabilities (ages 3-21) who are parentally-placed in nonpublic schools, home schools, including religious, elementary schools and secondary schools or approved cooperatives which are within the school district's jurisdiction.

The child find process must be designed to: 1) ensure the equitable participation of children parentally-placed in a nonpublic schools; 2) result in an accurate count of these children; 3) consist of similar activities as those undertaken for public school children; 4) be conducted in a time period that is comparable to that for children attending the public school; and 5) must include out of state children attending a nonpublic school within the district.

The school district must consult with appropriate representatives of nonpublic schools on how the child find activities will be conducted. The costs of carrying out the child find process, including individual evaluations, cannot be included in the proportionate share expenditures.

### **Questions and Answers- Child Find**

**1. To which children do the IDEA requirements for children with disabilities parentally-placed in nonpublic schools apply?**

IDEA provisions relating to children (ages 3-21) with disabilities parentally-placed in nonpublic schools apply to all children with disabilities parentally-placed in nonpublic elementary and secondary schools, including religious schools. A "nonpublic school" is considered an elementary school or secondary school if it meets the definition of elementary school or secondary school in Section 602(6) of the Act. The Act defines an elementary school or secondary school as a nonprofit institutional day or residential school, that provides elementary or secondary education, as determined under state law. *(See the Early Childhood section for preschool children)*

**2. Which school district is responsible for child find activities in nonpublic schools?**

The school district within which the nonpublic school is located is responsible.

**3. Can the school district which has evaluated a nonresident child share information with the child's resident school district?**

Not unless the parent gives written consent. A parent must give written consent before any personally identifiable information about the child is released between the school district within which the nonpublic school is located and the school district of the child's residence. If sharing information would facilitate identifying and serving the child, it may be

appropriate to seek parental consent, but the school district can not require the parent to provide consent.

**4. Do these requirements apply to children who are home schooled?**

Yes. If the child attends an exempt school under 92 NAC 12 or 92 NAC 13 the child with disabilities is considered to be parentally-placed in a nonpublic school. Therefore, the IDEA provisions relating to children with disabilities parentally-placed in a nonpublic school apply to children in home schools.

**5. Are children who reside out-of-state the responsibility of the school district within which the nonpublic school is located?**

Yes. The school district within which the nonpublic school is located is responsible for child find, evaluation, and provision of services for children with disabilities who reside out-of-state. Out-of-state residents must be included in the group of children with disabilities parentally-placed in nonpublic schools whose needs are considered in determining the types and amounts of services to be provided.

**6. How does a school district meet its child find responsibilities to children with disabilities parentally-placed in a nonpublic school?**

The school district within which the nonpublic school is located has options as to how it ensures that child find responsibilities are met. For example, the school district may assume the responsibility itself, or contract with another school district or agency. The school district should determine its child find procedures through the consultation process and plan.

**7. Do these requirements apply to children parentally-placed in residential care centers for other than educational reasons?**

No, these children are covered by Nebraska Revised Statue 79-215 (8).

**8. What are the required child find activities in nonpublic schools?**

The school district within which the nonpublic school is located must conduct similar child find activities to those undertaken in the public school. The child find process must be designed to ensure the identification and evaluation of all children parentally-placed in nonpublic schools, who are suspected of having a disability. Additionally, the child find process must be designed to allow for the equitable participation of such children, and result in an accurate count of children with disabilities, ages 3-21.

Child find activities for nonpublic school children must be similar to those for public school children. This generally includes such things as distribution of informational brochures, public service announcements, staffing exhibits at health fairs and community activities, and creating direct liaisons with nonpublic schools. The activities must be completed in a time period comparable to that for children attending the public schools. The school district cannot wait until child find activities for the public schools are completed before conducting child find activities in nonpublic schools. Each school district must consult with

nonpublic school representatives and representatives of parents of nonpublic school children with disabilities about the child find process.

**9. In conducting evaluations of children suspected of having disabilities parentally-placed in nonpublic schools, may a school district exclude children suspected of having certain disabilities, such as those with specific learning disabilities?**

No, the school district must identify and evaluate all nonpublic school children suspected of having a disability. School districts may not exclude from their child find activities children suspected of having certain disabilities, such as those with specific learning disabilities.

**10. What if the parent of a child parentally-placed in a nonpublic school refuses to consent for an initial evaluation?**

If the parent does not provide written consent for an initial evaluation or reevaluation, or fails to respond to a request to provide consent, the school district cannot use due process procedures to challenge a parent's refusal.

**11. Is it possible that a child could be evaluated at the same time by the child's school district of residence and school district within which the child's nonpublic school is located?**

Yes. There is nothing to prohibit parents from requesting an evaluation from the child's resident school district, which is responsible for FAPE, at the same time that the parents have requested that the district within which the nonpublic school is located evaluate their child.

This is not encouraged, and may not be in the best interest of the child. Simultaneous evaluations may not ensure that the evaluation is a meaningful measure of whether a child has a disability nor provides an appropriate assessment of the child's educational needs. Unless a parent chooses to inform the school district that their child is being evaluated by another school district, the two school districts may not know the child is being evaluated by both school districts.

School districts must obtain parental consent before any personally identifiable information about the child is released between officials in the school district within which the nonpublic school is located and officials in the school district in which the child resides.

**12. Who is responsible for paying for an evaluation of a nonpublic school child?**

The school district within which the nonpublic school is located is responsible for conducting and paying for an evaluation of a child with a suspected disability.

**13. Can the school district within which the nonpublic school is located request reimbursement from the school district where the child resides for the cost of evaluations?**

No, the school district within which the nonpublic school is located is responsible for the costs of child find activities and evaluation. However, the district within which the

nonpublic school is located has options as to how it meets evaluation responsibilities. For example, the school district may assume the responsibility itself, contract with another district, or make other arrangements.

**14. Can the costs expended for child find, including individual evaluations, be included in the required amount of funds to be expended on services for parentally-placed children?**

No. There is a distinction under the Act between the obligation to conduct child find activities and the obligation to expend a proportionate share for the provision of special education services to nonpublic school students. Child find and evaluation expenditures can not be included in the proportionate share expenditures.

**15. Is the school district where the parentally-placed child attends a nonpublic school required to reevaluate the child?**

Yes. Reevaluation is part of a school district's child find obligation. The child find requirements apply to children with disabilities parentally-placed in nonpublic schools. Therefore, a school district must initiate a reevaluation of a nonpublic school child at least once every three years. If the parent does not consent for reevaluation, or fails to respond to a request to provide consent, the school district may not use override procedures, and is not required to consider the child as eligible for services.

**16. If the school district conducts an individual evaluation, and the parents disagree with the evaluation and want to request an independent educational evaluation (IEE), to which school district must the parents bring their request: the school district within which the nonpublic school is located; or the school district where the child resides?**

Parents should file the request for an IEE with the school district that conducted the evaluation with which the parent disagrees.

**17. Must a child with disabilities parentally-placed in a nonpublic school who is identified during the school year wait until the next school year to participate in special education services?**

No, if the child is a resident of the school district within which the nonpublic is located, the school district is responsible for the provision of FAPE in accordance with 92 NAC 51.

If the child is identified during the school year and is not a resident of the district within which the nonpublic is located, the school district should consider providing special education services during the same school year. Whether the child receives services in the same school year will depend upon such factors as the services the child needs, the equitable services the school district has determined to provide, and whether the school district already has expended its proportionate share of IDEA funds. The parent may elect to request FAPE from the child's public school district of residence.

**18. Following the evaluation, are the eligibility determination requirements the same for a nonresident child with disabilities parentally-placed in a nonpublic school as for a resident child with disabilities parentally-placed in a nonpublic school?**

Yes. Following the initial evaluation, an eligibility determination must be made by the Multidisciplinary Team and the child's parents, and the team must determine whether the child is a child with a disability. The school district must provide the parent with a copy of the evaluation report and documentation of the eligibility determination. For children with disabilities, the parent must give prior consent to developing an Individualized Education Program (IEP) (*resident child*) or equitable services plan (*nonresident parentally-placed child*).

# **Provision of Equitable Services**

## **Equitable Services - Nonresident Children (ages 3-21)**

The public school district within which the nonpublic school is located is responsible for the development of a services plan for nonresident children with disabilities parentally-placed in a nonpublic school. The services plan does not entitle children with disabilities to a free and appropriate public education (FAPE). Therefore, the services plan may not include the same services the nonresident parentally-placed child with disabilities would receive from the resident school district.

The services plan describes the specific special education services that the school or approved cooperative will provide to the child in light of the equitable services that the school district has determined through the consultation process it will make available to nonresident children with disabilities parentally-placed in a nonpublic school.

The services plan, to the extent appropriate, must be developed, reviewed, and revised in the same manner as an IEP. Similarly, the services plan must to the extent appropriate include present levels of performance, goals, and equitable services.

The school district must initiate and conduct meetings to develop, review, and revise a services plan and ensure the participation of a nonpublic school representative. If the representative of the nonpublic school cannot attend, the school district shall use other methods to ensure participation by the nonpublic school representative, including individual or conference telephone calls.

Special education services provided to nonresident children with disabilities parentally-placed in a nonpublic school must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that nonpublic elementary school and secondary school teachers who are providing equitable services to children with disabilities parentally-placed in a nonpublic school do not have to meet the highly qualified special education teacher requirements.

## **Questions and Answers - Equitable Services Nonresident** **(ages 3-21)**

### **1. What are equitable services?**

A nonresident child with disabilities parentally-placed in a nonpublic school, which is located outside of his or her public school district of residence, has no individual entitlement to receive some or all of the special education and related services he or she would receive from his or her resident school district. The school district only must provide for the equitable participation of nonresident children with disabilities parentally-placed in a nonpublic school.

IDEA requires that annually a school district spend a proportionate share of IDEA funds on special education services for nonpublic school children with disabilities as a group. The services that will be made available are identified during the consultation process with nonpublic school officials and representatives of parents of children with disabilities parentally-placed in a nonpublic school.

### **2. How are equitable services for nonresident children with disabilities parentally-placed in a nonpublic school determined?**

No child with a disability parentally-placed in a nonpublic school which is located outside the public school district where the child resides, has an individual right to receive some or all of the special education and related services that he or she would receive from his or her resident school district. Decisions about how the proportionate share will be expended and what equitable services will be provided to children with disabilities parentally-placed in a nonpublic school are made through the district's consultation plan.

### **3. Who decides what equitable services the district will provide?**

The school district through a consultation meeting with nonpublic school officials and representatives of parents of children with disabilities parentally-placed in nonpublic schools makes the final determination of what special education services will be available.

### **4. What services must a school district provide to a child with disabilities parentally-placed in a nonpublic school?**

Children with disabilities parentally-placed children in a nonpublic school who are residents of the district within which the nonpublic school is located are eligible to receive FAPE from their resident school district and have an IEP.

Children with disabilities parentally-placed in a nonpublic school who are not residents of the district within which the nonpublic school is located are eligible to receive equitable services. A nonresident child with disabilities may or may not have a services plan depending on whether the child will be receiving equitable services as determined through the consultation process. The child's services plan describes the specific special education and related services that the school district or approved cooperative will provide. The amount of services could be different from what the child may receive from their resident school district.

**5. Who decides if a nonresident child with disabilities will receive equitable services or FAPE services?**

The parent decides. After determination of the child's eligibility for special education the school district should explain to the parents what equitable services are available and that a services plan for the child may be developed.

The school district should also inform the parents that the child's resident school district is responsible for the provision of FAPE and the parent may contact the resident school district to request FAPE.

If the parent makes clear his or her intention not to request FAPE from the child's resident school district, the school district within which the nonpublic school is located would develop a services plan depending on the availability of equitable services as determined in the consultation process.

# Services plan

## Questions and Answers -Services plan

### Nonresident children (Ages 3-21)

#### **1. What must a services plan include?**

Nonresident children with disabilities parentally-placed in a nonpublic school designated by the school district to receive special education services must have a services plan in place before the child can receive services. A services plan describes the specific special education the child will receive from the school district in light of the services the school district has determined will be available to nonpublic school children. To the extent appropriate, the services plan includes IEP elements. The elements in each child's services plan may vary depending on the services to be provided as determined in the consultation plan.

#### **2. What should an equitable services plan include?**

As appropriate, the services plan should include:

- (a) the child's present levels of educational performance in the areas targeted for services by the school district (i.e., speech, reading, social skills, etc.);
- (b) annual goals specific to the services to be provided;
- general curriculum;
- (c) the type, amount, frequency, location, and duration of the services to be provided.

#### **3. Is a services plan required for a nonresident child who is eligible for services, but those services do not fall within the array of services the public school is offering as determined through the consultation process?**

No. There is no requirement that a services plan be written for a child in this instance.

#### **4. How often must a services plan be written?**

Services plans must be reviewed and revised at least annually, and be revised as appropriate.

#### **5. Must the parent of a child with disabilities parentally-placed in a nonpublic school participate in the development of a services plan?**

Parents of the child are necessary participants and should participate in the meeting to develop the services plan for their child. If neither parent can attend the services plan meeting the school district shall use other methods to ensure parent participation, such as conference phone calls.

**6. What is the difference between an individualized education program (IEP) and a services plan (SP)?**

A services plan (*nonresident children*) will reflect only available special education services the child with disabilities is designated to receive, and must, to the extent appropriate, meet the IEP content requirements or when appropriate, for children ages three through five, the Individual Family Services plan (IFSP) requirements.

The services plan will describe the specific special education services that the school or approved cooperative will provide to the child in light of the services that the school district has determined through the consultation process that it will make available to nonresident children parentally-placed in a nonpublic school.

**7. Can the school district's IEP form serve as a services plan for a nonresident child with disabilities parentally-placed in a nonpublic school?**

It is not recommended. Using an IEP form in lieu of a services plan form may not be appropriate, as an IEP form generally includes more information and services than a nonresident child with disabilities parentally-placed in a nonpublic school will receive. There is nothing however, in the regulations that would prevent a district from using their IEP form in lieu of a services plan form.

**8. Can a services plan be revised?**

Yes, a services plan can be revised using appropriate team members and the same procedures for revising an IEP. Since services to children with disabilities parentally-placed in a nonpublic school are determined based on funding, when services costs unexpectedly exceed the proportionate share of funds available for nonpublic school children, the public school district may convene another meeting to revise the services plan.

**9. What if a parent is not satisfied with the special education services the public school district will provide pursuant of the child's services plan?**

Parents who wish to access a greater level of support for their child than what is offered through the consultation plan and included on the child's services plan, may elect to receive a free appropriate public education (FAPE) from the child's resident (*where the child resides*) public school district.

**10. Can a parent, whose child is receiving equitable services, at any time request FAPE from the resident school district?**

Yes, at any time a parent may request FAPE from the district where the child resides.

**11. Can a child with disabilities parentally-placed in a nonpublic school have both an individualized education plan and a services plan at the same time?**

No.

**12. Who should provide equitable special education services to nonresident children with disabilities parentally-placed in a nonpublic school?**

Equitable services may be provided by personnel of a public school district or may be provided by individuals or agencies who are contracted by the public school district. The school district may use Part B funds to make public school personnel available, to the extent necessary to provide equitable services for nonpublic school children with disabilities.

The public school district may contract with employees of the nonpublic schools if the employee performs the services outside of his or her regular hours of duty and the public school contracted employee performs the services under public school supervision and control.

**13. Where can special education and related services be provided to children with disabilities parentally-placed in a nonpublic school?**

Services offered to children with disabilities parentally-placed in nonpublic schools may be provided on-site at the child's nonpublic school, including religious schools, at the public school, or at another location.

**14. How is the location where services will be provided to children with disabilities parentally-placed in a nonpublic school determined?**

The location of services is discussed during the consultation process with representatives of the nonpublic school. The public school makes the final decision, using input through the consultation process.

**15. Do parents sign a placement form if their child is only eligible for equitable special education services (services plan)?**

No, documentation of placement and the placement decision-making process is not a required procedure.

EXAMPLE PUBLIC SCHOOL EXAMPLE, NEBRASKA			<b>SERVICES PLAN NONRESIDENT CHILD PARENTALLY-PLACED IN A NONPUBLIC SCHOOL</b>		
Student Name	DOB	Age	M F	Grade	Today's Date
		<b>Measurable Annual Goal(s) for Direct Service(s)</b>			
Parent(s) Name	Parent(s) Address		Home Phone		
			Work Phone/Cell Phone		
			Email Address		
Nonpublic School	Child's Resident School District		Public School District Providing Services		
Parent concerns					
Present Levels of Education Performance					
<b>Service Delivery Plan Schedule</b>					
<b>Date of Initiation of Services:</b>		<b>Anticipated Duration of Services:</b>			
<b>Description of Service(s) to be Provided by the Public School</b>		<b>Hours Per Week</b>		<b>Location</b>	
Direct Service					
Consultation					
Teacher Training					
Instructional Materials					
Equipment					
Transportation					

**Documentation Of Participation In Meeting**

The following individuals, as indicated by their signatures, participated in the development of this Services plan.

Parent/Guardian /Surrogate	Date	Parent/Guardian/Surrogate	Date
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Nonpublic School Representative	Date	Signature/Position	Date
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Signature/Position	Date	Signature/Position	Date
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Other	Date	Other	Date
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**Notice To Parent Regarding Availability Of A Free Appropriate Public Education (FAPE)**

Nonresident children with disabilities parentally-placed in a nonpublic school have no right to receive some or all of the special education and related services that would be available if the child was receiving special education services from their resident public school. The district in which your child resides will provide free appropriate public education in accordance with the Individuals with Disabilities Education Act (IDEA). Please contact - \_\_\_\_\_ at the \_\_\_\_\_ public school district if you elect for your child to have an Individualized Education Program (IEP) and the provision of a free and appropriate special education and related services.

***NOTIFICATION OF  
SERVICES PLAN MEETING***

Date \_\_\_\_\_

To: \_\_\_\_\_  
Parent/Address

\_\_\_\_\_  
(Child's name)  
A services plan meeting has been scheduled for (proposed meeting date, time and place)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
We must meet with you to develop your child's educational services plan. It is very important that you attend this meeting. With your input, we can develop an education services plan describing the specific services the district will provide in light of the services the school district will provide as determined through the consultation plan with nonpublic school representatives. If you would like, you may review your child's education records prior to the meeting. At this services plan meeting we will be discussing:

1. Your child's present levels of performance and educational needs;
2. Annual goal/s;
3. Services your child will receive.

In addition to you, the following people will be in attendance at the Services plan meeting:

1. \_\_\_\_\_, a special education teacher;
2. \_\_\_\_\_, a public school representative;
3. \_\_\_\_\_, a nonpublic school representative;
4. The following individuals who can help explain the evaluation results or who have special knowledge or expertise regarding you child or services that may be needed; \_\_\_\_\_

# **Proportionate Share and Expenditures**

## **Child Count, Expenditures and Finance**

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) and 92 NAC require that each school district determine the proportionate amount of federal funds to be expended on special education services (including direct services) for children with disabilities parentally-placed in nonpublic schools which are within the public school district.

For children aged three through twenty one, an amount that is the same proportion of the nonpublic school district's total sub grant under section 611(f) of the Act as the number of school children with disabilities aged three through twenty one who are enrolled by their parents in nonpublic, including religious, home schools, elementary schools and secondary schools which are located within the school district, is to the total number of children with disabilities within its jurisdiction, ages 3-21.

For children aged three through five, an amount that is the same proportion of the school district's total sub grant under section 619(g) of the Act as the number of nonpublic school children with disabilities aged three through twenty one who are parentally-placed in nonpublic, including religious, elementary schools which are within the school district, is to the total number of children with disabilities within its jurisdictions age three through five. Children ages three through five are those children parentally-placed in a nonpublic preschool that is a part of an approved or accredited elementary school.

Each school district, after timely and meaningful consultation with representatives of parentally-placed nonpublic school children, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending nonpublic schools, including home schools which are within the school district. This annual December proportionate share child count includes both children who have been determined to be eligible and receiving services, and those who are eligible and are not receiving services. The annual SESIS child count and proportionate share child count are two separate child counts taken in December.

The proportionate share is calculated based on the district's annual December proportionate share child count of children with disabilities parentally-placed in nonpublic schools. The proportionate share must be calculated by June 30<sup>th</sup> of each year and represents the amount of federal funds that must be spent on children with disabilities parentally-placed in nonpublic schools during the next fiscal year. (See *Proportionate Share Calculation Worksheet*, included in this section of *Technical Assistance document*, and can also be found on *NDE, Special Populations website*).

Child find and individual evaluation costs cannot be included in the proportionate share expenditures. Public school contracted services, transportation, and special education

service expenses for children with disabilities parentally-placed in nonpublic schools can be included in the proportionate share expenditures.

If the public school district has not expended the entire proportionate share by the end of the fiscal year, the district must obligate the remaining funds for special education services to children with disabilities parentally-placed in nonpublic schools during a carry-over period of one additional year.

## Proportionate Share Calculation (Ages 3-21)

Number of children with disabilities in the Public School District	<b>300</b>
Number of parentally-placed nonpublic school children with disabilities	<b>20</b>
Total number of children with disabilities in the district	<b>320</b>
Total federal flow through funds to the district	<b>\$152,500.00</b>
Total federal flow through funds divided by total number of children with disabilities in the district (320) equals the average allocation per child	<b>\$476.56</b>
Average allocation per child multiplied by the number of parentally-placed nonpublic school children with disabilities (20) equals the amount which must be expended on parentally-placed nonpublic students with disabilities	<b>\$9,531.20</b>

### Administration of Funds

A school district or approved cooperative must administer the funds used to provide special education services, and hold title to and administer materials, equipment, and property purchased with that fund for those uses and purposes.

### Public School Personnel

A school district or approved cooperative may use special education funds to make public school personnel available in other than public facilities: 1) to the extent necessary to provide services designed for children with disabilities parentally-placed in nonpublic schools, and 2) if those services are not normally provided by the nonpublic school.

### Nonpublic School Personnel

A public school district or approved cooperative may use special education funds to pay for contracted services of a nonpublic school employee of a nonpublic school to provide special education and related services if: 1) the employee performs the services outside of his/her regular hours of duty; and 2) the employee performs the services under public school supervision and control. It is recommended that the school district keep clear records of contractual payments to document that the district is not reimbursing the nonpublic school for services.

## Questions and Answers - Proportionate Share Child Count, Expenditures, and Finance

### Child Count

- 1. Why is it important to identify the number of children with disabilities parentally-placed in nonpublic schools which are within the school district?**

An accurate count of the number of children with disabilities parentally-placed in nonpublic schools which are within the school district's boundaries is needed to calculate the proportionate share of IDEA funds the school district must expend annually on equitable services for children with disabilities parentally-placed in nonpublic schools.

See Proportionate Share section of this document for more specific annual child count and calculation of a school district's proportionate share information.

- 2. How does the school district determine the number of children with disabilities to use in calculating the proportionate share of IDEA funds?**

When school districts do their annual December SESIS child count, they must also conduct a Proportionate Share child count. School districts must determine the number of resident and nonresident children with disabilities parentally-placed (ages 3-21) in nonpublic schools, including home schools which are within the school district's boundaries. An activity of the consultation meeting with representatives of nonpublic schools is to decide how the public school will ensure an accurate December child count. The December count is used to determine the amount the school district must spend in the subsequent fiscal year.

- 3. Must the school district within which the nonpublic school is located include in the proportionate share child count children who are eligible to receive services but are not receiving services?**

Yes, the school district within which the nonpublic school is located must include children who are eligible and not receiving services.

- 4. Which school district includes children attending nonpublic schools who are receiving FAPE in their child count?**

The school district within which the nonpublic schools, including home schools, are located includes all children with disabilities who are receiving FAPE regardless of whether the child is a resident or not. The school district's child count includes those children with disabilities who are: resident children receiving FAPE; nonresident children receiving equitable services; and children who are eligible and not receiving services.

**5. What is a proportionate share child count?**

The proportionate share child count is a count of all eligible children with disabilities who attend a nonpublic school which is within the school district’s boundaries, regardless of who is providing special education services.

For Example:

Proportionate Share Child Count includes:

Nonpublic resident children	5 children
Nonpublic nonresident children - served by the district	4 children
Nonpublic nonresident children - served by resident district	2 children
Nonpublic eligible, but not receiving services	1 child

**Proportionate Share Child Count            12 children**

**6. Is the annual December SESIS child count the same as the required annual December proportionate share child count?**

No, the annual December SESIS and the annual December proportionate child count for calculation of proportionate share are two separate child counts.

For example:

School District A’s December nonpublic Proportionate Share child count:

The Proportionate Share nonpublic school children count includes:

Nonpublic resident children	5 children
Nonpublic nonresident children - served by the district	4 children
Nonpublic nonresident children - served by resident district	2 children
Nonpublic eligible, but not receiving services	1 child

**December Proportionate Share Nonpublic Child Count            12 children**

The SEGIS nonpublic school children count includes:

Nonpublic resident children- served by the district	5 children
<u>Nonpublic nonresident children - served by the district (services plan)</u>	<u>4 children</u>

**December SESIS Nonpublic Child Count            9 children**

SEGIS is an unduplicated December child count of children who are receiving services from the district. Nonpublic nonresident children who are receiving services from another district are included in that school district’s SESIS count.

## Expenditures and Finance

- 1. Can the school district include costs of child find activities and evaluations in the required amount of proportionate funds to be expended on equitable services for children with disabilities parentally-placed in nonpublic schools?**

No, the costs of child find activities for parentally-placed children in nonpublic schools, including individual evaluations, may not be considered in determining whether the district has spent an appropriate amount on providing special education and related services to children with disabilities parentally-placed in nonpublic schools.

- 2. How should a school district calculate the proportionate share of IDEA funds that must be spent on special education and related services?**

The NDE Proportionate Share calculation worksheet explains how the proportionate share is calculated. The worksheet can be found on the NDE, Special Populations website.

- 3. What expenditures can be considered when determining whether a school district has expended a proportionate share of its IDEA funds?**

Expenditures for special education services, including transportation, may be considered when determining whether the school district has expended the required proportionate share of IDEA funds. Expenditures for child find activities, including evaluations, cannot be considered.

- 4. May a school district provide additional services to children with disabilities parentally-placed in a nonpublic school in excess of the required IDEA proportionate share of equitable services?**

Yes. A school district may provide additional services, consistent with state law or local policy.

- 5. Can a school district decide to exclude eligible nonresident children with disabilities in the proportionate share expenditures?**

No, children with disabilities parentally-placed in nonpublic schools are considered a group and the proportionate share must be expended for the group. The school district's consultation plan determines the services that will be made available to children with disabilities parentally-placed in nonpublic schools. The consultation plan may have determined that not all and only some services will be available that a child would receive from their school district of residence.

**6. What does the school district do if it is unable to spend its entire proportionate share of IDEA funds by the end of the fiscal year?**

If the school district has not expended the entire proportionate share of IDEA funds by the end of the fiscal year, the school district must obligate the remaining funds for services to children with disabilities parentally-placed in nonpublic schools during a carry-over period of one additional year.

**7. May a school district meet the requirement to expend a proportionate share of funds on services to children with disabilities parentally-placed in a nonpublic by spending state and local funds?**

No, a school district is required to spend a proportionate share of its federal IDEA funds to satisfy this obligation. If a public school district uses state and local funds to provide special education services to children with disabilities parentally-placed in a nonpublic school, those funds can be used only to supplement and not supplant the proportionate share of federal funds.

**8. Can the local public school district turn over proportionate share funds to one or more nonpublic schools in its jurisdiction for the purpose of allowing the nonpublic schools to purchase services in keeping with the district's plan for spending proportionate share funds?**

No, IDEA makes clear that a public school district is required to maintain control over funds and property utilized for the purpose of providing proportionate support to children with disabilities parentally-placed in a nonpublic school.

**9. May nonpublic school officials order or purchase materials and supplies needed for the special education services and be reimbursed by the public school district?**

No, nonpublic school officials may not obligate or receive Part B funds. The school district must control and administer the funds used to provide special education services to children with disabilities parentally-placed in a nonpublic school, and maintain title to materials, equipment, and property purchased with those funds.

**10. Can the public school place equipment and supplies for equitable services in a nonpublic school?**

Public schools may place equipment and supplies in a nonpublic school for the period of time needed for the program. The public school must ensure that equipment and supplies placed in a nonpublic school are used only for the purpose of providing special education services and can be removed from the nonpublic school without remodeling the nonpublic school facility.

The public school must remove equipment and supplies from a nonpublic school if the equipment and supplies are no longer needed for the purpose of providing special education services; or if removal is necessary to avoid unauthorized use of the equipment and supplies for other than special education purposes.

**11. May Part B funds for equitable service be used for repairs, minor remodeling, or construction of nonpublic schools facilities?**

No, proportionate share funds can not be used for repairs, minor remodeling, or construction of nonpublic schools facilities.

**12. How do districts maintain accounting records to document funds that are expended for nonpublic proportionate share services?**

An annual finance report (AFR) account function code has been created by school finance for this purpose. School districts shall report all expenditures for nonpublic proportionate share service within function code 4412.

## NDE Special Populations Office

# Calculating Proportionate Share

## Worksheet For Non Public Schools 2007-2008

The following is provided for school districts as they address their responsibilities for providing special education and related services to parentally-placed non-public school children. The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) requires that each school district determine the proportionate amount of Federal funds to be expended by the district for children **attending** nonpublic schools located within their district's jurisdiction. This is a significant change from previous requirements. IDEA 2004 places the responsibility for special education services with the district where the non-public school is located and not with the district in which the child resides.

In order to calculate the proportionate amount of IDEA Part B funds that must be expended on services for this population of children, districts must collect the required data as directed. The proportionate share calculation must be completed by **June 30, 2007** and represents the amount of federal funds that must be spent for this population of students in the next fiscal year.

### Required data:

Number of eligible children in the Non-Public schools ages 3 – 21 - This includes Non-Public school and home schooled children **eligible and served** as well as Non-Public school and home schooled children **eligible but not served** by the public school.

Number of eligible children in the public school ages 3-21 – This includes children enrolled in public schools **eligible and served** as well as public school children **eligible but not served** by the public school.

Total Part B flow-through allocation (both 611 and 619 funds) provided by NDE.

Eligible children are children who have been evaluated and determined eligible for special education and related services by the public school. Served children are children who are receiving special education and related services through the public school. Home schooled children are included in this population of parentally-placed non-public school children. They must be included, as appropriate, in the data defined above.



Total eligible Nonpublic school children			<b>Calculated Total</b>
<b>Eligible Public School Children in the District's Boundaries</b>			
Public school children eligible and served ages 3-21	Enter number:		December 1 child count, total count of children served, ages 3-21, excluding nonpublic school and home schooled children eligible and served reported above
Public school children eligible but not served	Enter number:		District data collection
TOTAL eligible public school children			<b>Calculated Total</b>
<b>Eligible Public and Nonpublic School Children</b>			
Total eligible public and nonpublic school children			<b>Calculated Total</b>
<b>Total Part B Flow-Through Allocation</b>			
Applicable Federal Funds - Final document will have this figure provided by NDE		0	Part B flow-through allocation (IDEA Base and Enrollment/Poverty Part B Grant ("611" and "619" funds))
<b>PROPORTIONATE SHARE</b>			<b>Calculated Proportionate Share</b>

The calculated proportionate share is the total amount of funds required to be expended on parentally-placed nonpublic school children ages 3-21 in the district.

District may not use Proportionate Share funds for child find or evaluations.

As the authorized representative for the school district, I hereby certify that this application is a true and accurate count of both public school children ages 3-21 residing within the district who are eligible to received special education services and nonpublic school children ages 3-21 attending nonpublic schools within the district that are eligible to receive special education services.

I further assure that the identified proportionate share allocation will be expended by the district for services to nonpublic students and that the district will maintain financial records available for audit to document the student counts and programs expenditures.

Ready to Submit:

Yes       No

<b>Authorized School District Official</b>		
Name:	Title:	County District:
Phone:	Email:	Date:

# **Provision of Free Appropriate Public Education (FAPE)**

## **Questions and Answers**

- 1. Can children enrolled in a nonpublic school receive a free appropriate education (FAPE)?**

Yes, children with disabilities parentally-placed in a nonpublic school are entitled to receive the provision of FAPE from the school district in which they reside.

- 2. Can a parent of a nonresident child with disabilities who is parentally-placed in a nonpublic school whose child who is receiving equitable services request FAPE at any time from the resident school district?**

Yes, Nebraska state statute declares that the resident school district is responsible for the provision of FAPE for all children with disabilities. The school district would develop an IEP for the child.

# Complaint

## Questions and Answers- Complaints

### **1. Can a representative of a nonpublic school file a complaint about the consultation process?**

Yes, a nonpublic school official has the right to submit a complaint to Nebraska Department of Education, Special Populations Office if the public school: 1) did not engage in consultation that was meaningful and timely; or 2) did not give due consideration to the views of the nonpublic official as described in 92 NAC 51-015.03F.

The nonpublic school official must provide to Nebraska Department of Education, Special Populations Office the basis of the noncompliance by the public school district with applicable nonpublic school provisions in this part; and the public school district must forward the appropriate documentation to Nebraska Department of Education, Special Populations Office.

If the nonpublic school official is dissatisfied with the decision of the Nebraska Department of Education, the nonpublic official may submit a complaint to the Secretary of the U.S. Department of Education. The Nebraska Department of Education must forward the appropriate documentation to the Secretary of the U. S. Department of Education.

### **2. Can a parent of a nonresident child with disabilities parentally-placed in a nonpublic school file a due process complaint?**

Yes, but only if the school district has failed to meet the child find requirements in 92 NAC 015.03B, or did not provide timely and meaningful consultation with representatives of the nonpublic schools and parent representatives as described in 92 NAC 51-015.03F.

However, parents are not able to request mediation or a due process hearing regarding the services the child is receiving, because there is no individual right to them under the law.

## **Preschool Children With Disabilities-**

### **Ages Three through Five**

Children with disabilities ages three through five are considered to be “parentally-placed in a nonpublic preschool” including religious preschools, home preschools, and elementary schools only if they are enrolled in a nonprofit nonpublic preschool or facility that is a part of an approved or accredited elementary school. Accordingly, if a nonprofit nonpublic preschool, day-care program, or other nonpublic early childhood program or facility, including home schools are a part of an approved or accredited elementary school, child find and equitable participation requirements apply to those children with disabilities enrolled by their parents in such programs.

Therefore, a school district is not responsible for child find activities and the provision of equitable services for nonresident children with disabilities parentally-placed in preschools which are within the school district that are not a part of an approved or accredited elementary school.

Many preschool children with disabilities parentally-placed in nonpublic preschools, because they attend a nonpublic preschool or a facility that is not a part of an approved or accredited elementary school, are the responsibility of the child’s resident school district for child find and the provision of a free and appropriate public education (FAPE).

Preschool children with disabilities parentally-placed in a nonpublic preschool, including home preschools who reside within the school district in which the nonpublic preschool is located, are eligible for the provision of FAPE from the public school district of residence.

Nonresident preschool children with disabilities parentally-placed in preschool programs which are within the school district, and are a part of an approved or accredited elementary school, are included in child find activities and are eligible to receive equitable services (services plan); or may elect to receive FAPE from their school district of residence.

Nonresident preschool children with disabilities parentally-placed in preschool programs, including home preschools that are not a part of an approved or accredited elementary school are eligible to receive FAPE from the school district in which the child resides. The school district where the child resides is responsible for child find activities and evaluation.

## **Questions and Answers -Preschool**

### **1. Which children are considered parentally-placed nonpublic preschool children?**

Only those preschool children with disabilities parentally-placed in nonprofit nonpublic preschools including preschools that are a part of an approved or accredited elementary school are considered to parentally-placed in a nonpublic preschool.

### **2. Do child find and equitable participation requirements apply to children with disabilities ages 3 through 5 parentally-placed in nonpublic preschool programs?**

Yes, under certain conditions. The public school district within which the nonpublic preschool is located is responsible for:

- ◆ child find and equitable services for nonresident children attending nonpublic nonprofit preschools that are a part of an approved or accredited elementary school;
- ◆ child find and FAPE for resident children with disabilities parentally-placed in nonpublic preschool programs regardless of whether or not the preschool is a part of an approved or accredited elementary school.

### **3. Which school district is responsible for children with disabilities parentally-placed in a nonpublic preschool that is not a part of an approved or accredited elementary school?**

The school district where the child resides is responsible for child find and the provision of free appropriate public education (FAPE).

### **4. Which parentally-placed nonpublic preschool children does a school district include in the annual December proportionate share count?**

The school district is required to include all resident children receiving FAPE and all nonresident children with disabilities attending nonpublic preschool schools including home preschools that are a part of an approved or accredited elementary school which are located within the school district.

In addition the public school count should include nonpublic school that are eligible but are not receiving special education services.

**5. Are preschool programs which are in a church, home, or other buildings considered nonpublic schools?**

The determining factor is not the location; it is whether the preschool program is a part of an approved or accredited elementary school.

**6. Is a preschool child with disabilities parentally-placed in a nonpublic preschool program that is not a part of an approved or accredited elementary school entitled to FAPE?**

Yes, the preschool child with disabilities is eligible to receive FAPE from his/her public school district of residence, regardless of where the preschool program is located. The requirements of IDEA 2004 (children with disabilities parentally-placed in nonpublic schools) do not apply to preschools that are not a part of an approved or accredited elementary school.

# **Out-of-State Children with Disabilities**

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## **Questions and Answers**

- 1. What is the responsibility of the school district to conduct child find activities for parentally-placed nonpublic school children who reside outside of the state?**

The school district within which the nonpublic school is located is responsible for conducting child find, including individual evaluations, of all parentally-placed nonpublic school children suspected of having a disability. This includes children from other states attending nonpublic elementary schools and secondary schools within the school district.

- 2. Who is responsible for determining and paying for services provided to children with disabilities parentally-placed in nonpublic schools who reside outside the state?**

The public school district within which the nonpublic schools is located, through the consultation process, is responsible for determining and paying for equitable special education services to be provided to children with disabilities parentally-placed in nonpublic schools. These out-of-state children must be included in the group of parentally-placed children with disabilities whose needs are considered in determining which children with disabilities parentally-placed in a nonpublic school will be served and the types and amounts of services to be provided.

## **Transportation**

Services to children with disabilities parentally-placed in a nonpublic school may be provided on the premises of nonpublic, including religious schools, to the extent consistent with law. If necessary for a child to benefit from or participate in the services provided, a child with disabilities parentally-placed in a nonpublic school must be provided transportation: from the child's school or the child's home to a site other than the nonpublic school; and from the service site to the nonpublic school, or to the child's home, depending on the timing of the services. The public school district is not required to provide transportation from the child's home to the nonpublic school.

The costs of transportation may be included in calculating whether the public school district has met the requirements for proportionate share expenditures.

### **Questions and Answers- Transportation**

- 1. Is a school district required to provide transportation for a child with disabilities parentally-placed in a nonpublic school when the child needs transportation to receive the services?**

Yes, if it is necessary for a nonpublic school child to benefit from or participate in special education services, transportation must be provided from the child's school or the child's home to a site other than the nonpublic school; and from the service site to the nonpublic school, or to the child's home. IDEA provisions do not require the school district to provide transportation from the child's home to the nonpublic school.

## **NCLB Qualified Teachers**

Services provided to children with disabilities parentally-placed in a nonpublic school must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that nonpublic elementary and secondary teachers who are providing equitable services to children with disabilities parentally-placed in a nonpublic school do not have to meet the highly qualified special education teacher requirements.

### **Questions and Answers**

#### **1. Who must meet the NCLB Qualified Teacher requirements?**

The regulations at 34 CFR §300.138(a) clarify that personnel providing equitable services required by IDEA to children parentally-placed in nonpublic schools by their parents must meet the same standards as personnel providing services in the public schools, except that nonpublic elementary and secondary school teachers who are providing equitable services to children with disabilities parentally-placed in a nonpublic school do not have to meet the NCLB Qualified Teacher Requirements in 34 CFR §300.18. If the responsible school district contracts with the nonpublic school teachers to provide equitable services to children with disabilities parentally-placed in nonpublic schools, those nonpublic school teachers do not have to meet the NCLB Qualified Teacher requirements for special education teachers. However, if public school personnel provide equitable services to nonpublic school children on or off the premises of the nonpublic school, those public school personnel must meet the NCLB Qualified Teacher requirements.

## **Equipment and Supplies**

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A school district or approved cooperative may place equipment and supplies in a nonpublic school for the period of time needed for the provision of special education services. Equipment and supplies placed in a nonpublic school are to be used only for the purpose of providing special education services; and can be removed from the nonpublic school without remodeling the nonpublic school facilities.

The supplies and equipment shall be removed if: 1) the equipment and supplies are no longer needed for the purpose of providing special education services; 2) or removal is necessary to avoid unauthorized use of the equipment and supplies for other than special education purposes.

## **Record Keeping**

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School districts must maintain records regarding the following:

### **Consultation Plan Process**

Record and documentation of:

- Meeting notices
- Meeting agendas and discussion
- Consultation Plan summary
- Written affirmation of nonpublic school representatives in the consultation plan process

### **Proportionate Share**

#### **Child Count**

Each public school district must maintain records, and provide to Nebraska Department of Education, Special Populations the following information related to eligible children with disabilities parentally-placed in nonpublic schools:

- 1) The number of eligible children with disabilities parentally-placed in nonpublic schools;
- 2) The number of eligible public school children with disabilities served;
- 3) The number of eligible children with disabilities parentally-placed nonpublic children, but not served.

### **Proportionate Share Expenditures**

Record and document how proportionate share was expended on children with disabilities parentally-placed in nonpublic schools for the fiscal year;

Record and document how any carry over funds from the previous year were expended on children with disabilities parentally-placed in nonpublic schools within the fiscal year (one year carry over).