



Illinois State Board of Education

April 21, 2006
Guidance Document

SUPPLEMENTAL GUIDANCE INFORMATION TO MEMORANDUM #05-7 (AUGUST 11, 2005) REGARDING THE NON-PUBLIC PROPORTIONATE SHARE

*This document is intended to provide non-regulatory guidance on the subject matter listed above.
For specific questions, please contact the person(s) identified in the document.*

Rod R. Blagojevich, Governor

Illinois State Board of Education

Jesse H. Ruiz, Chairman • Dr. Christopher J. Ward, Vice Chair • Dr. Vinni M. Hall, Secretary
Dr. Andrea S. Brown • Dean E. Clark • Dr. David L. Fields • Edward J. Geppert, Jr.
Brenda J. Holmes • Joyce E. Karon

Dr. Randy J. Dunn, State Superintendent

TO: District Superintendents
Directors of Special Education

FROM: Timothy Imler
Division Administrator for Funding & Disbursements

Christopher Koch, Ed.D.
Assistant Superintendent for Special Education

RE: Supplemental Guidance Information to Memorandum #05-7 (August 11, 2005)
Regarding the Non-public Proportionate Share

The purpose of this memorandum is to provide supplemental guidance to [Memorandum #05-7](#) distributed by Dr. Chris Koch on August 11, 2005 and provide additional information on issues related to the non-public proportionate share calculation. In a January 24, 2006 joint memorandum, extensive changes and new special education reporting requirements were described regarding the conversion to iePoint>2006. One of the changes requires all school districts to report information pertaining to parentally-placed students at non-public schools. This information will be used along with other FACTS data to determine each district's non-public proportionate share amount for FY 2007.

Please note that the United States Department of Education (USDE) has recently issued [Questions and Answers On Serving Children With Disabilities Placed by Their Parents at Private Schools](#). Memorandum #05-07 and this Supplemental Guidance Information should be read in conjunction with the USDE's Q&As, as SEAs and LEAs are of course both subject to federal law. Moreover, final federal regulations will supersede any State or federal guidance.

A. DEFINITIONS & BASIC ELIGIBILITY

1. What is considered a non-public or private school?

The terms "non-public school" or "private school" for issues related to the non-public proportionate share refers to a privately operated elementary or secondary school (e.g. parochial) **or a home school** (see [People v. Levisen](#), 404 Ill. 574, 90 N.E.2d 213 (1950)).

Please note that this definition supersedes the definition set forth in Memorandum #05-7.

2. Who is included in the FY 2007 non-public proportionate share calculation?

Non-public proportionate share is calculated for students aged 3-21 under IDEA Part B Flow Through (Section 611) and students aged 3-5 under IDEA Preschool (Section 619). Eligible students include all non-public school students served by the public school district via an Individualized Services Plan (ISP) as of December 1, 2005 (Coded as Fund Code L or Fund Code P in FACTS) and all other non-public school students evaluated and determined eligible for services as of December 1, 2005.

3. Who is considered “eligible for services”?

All non-public school students evaluated and determined eligible for special education services are eligible for services. This is true regardless of whether the public school district uses their non-public proportionate share funds to offer the services needed by such student (e.g. speech) or the parent/non-public school refuses the public school services.

4. Is a public school obligated to provide direct and related services to a non-public special education student even if the non-public school where the student attends chooses to not report enrollment information to the Illinois State Board of Education?

Yes. Enrollment is not a factor in the calculation of the non-public proportionate share calculation for the district. While non-public schools are highly encouraged to provide their enrollment to the ISBE via the [Non-Public Registration, Enrollment and Staff Report](#) it does not relieve the district from providing direct and related services to non-public school students with its proportionate share funds.

5. Are districts required to evaluate and serve non-public school students who attend a non-public school within Illinois, but who reside outside of Illinois?

Yes. See Questions E-1 and E-2 of the [USDE’s Questions and Answers](#).

B. TIMELY & MEANINGFUL CONSULTATION

1. How does a district satisfy the requirement for timely and meaningful consultation with school and parent representatives from the non-public schools within a district’s jurisdiction?

See Questions A-1 through A-4 of the [USDE’s Questions and Answers](#). The number of meetings needed to provide the timely and meaningful consultation is dependent upon the administrative choices each district feels necessary.. Timely and meaningful consultation need not be done individually for each and every family that has a student within a non-public setting.

The documentary requirements for districts to evidence compliance with the timely and meaningful consultation component are set forth in [ISBE Guidance Memorandum 05-7](#). Though member districts of the same special education cooperative are permitted to conduct a timely and meaningful consultation jointly under the auspices of the cooperative, each

member district will be expected to submit its own documentation of timely and meaningful consultation, beginning in the 2006-07 school year.

2. **A local district has proposed, through timely and meaningful consultation, to provide services to students on-site at a particular non-public school, in response to which the non-public school refuses to make its facility available for service delivery. A student from the non-public school is nonetheless eligible to receive proportionate share support from the local district. What is the local district's obligation toward this student?**

The local district has the responsibility to afford this student the same opportunity to participate in proportionate share services as any other student attending non-public school within the district. Although the non-public school has refused to allow the district to use its facility for delivering services, this fact cannot override the district's obligation to serve a student who attends that school. As an alternative, the district can offer services to the student in one of the district's facilities or in another mutually-agreed location. The local district should, as part of the timely and meaningful consultation process, discuss where services will be provided.

C. CHILD-FIND & EVALUATION OF STUDENTS

1. **During the 2005-06 school year, the resident district is responsible for conducting initial evaluations of parentally-placed non-public school children, while the serving district (i.e., the district in which the non-public school is located) is responsible for providing the services. What is the serving district's responsibility during the 2005-06 school year, though, if the student would not be considered eligible under the serving district's eligibility criteria?**

As ISBE discussed in [Memorandum 05-7](#), the resident district has the responsibility (during the 2005-06 school year only) to conduct the eligibility conference for a student who has been referred by a serving district or otherwise for an initial evaluation. The resident district has the further responsibility to afford the serving district the opportunity to attend the eligibility conference and to have input. In the event the eligibility conference results in a determination of eligibility for special education, the serving district bears the responsibility for providing services to the student in accordance with the serving district's overall plan for spending its proportionate share funds. **Beginning with the 2006-07 school year, however, the serving district will have the responsibility for conducting all eligibility conferences for parentally-placed non-public school students regardless of the residency of the students.**

2. **Are triennial re-evaluations required for parentally-placed non-public school students served via an Individualized Services Plan ("ISP")?**

Yes. See Question B-9 of the [USDE's Questions and Answers](#).

- 3. In 2005-06 the resident district conducted evaluations and determined eligibility for some non-public students that are being served in another district. Who is responsible for reporting these students in FACTS?**

The district that served a non-public school pupil via an ISP (i.e. Fund Code L or Fund Code P) as of December 1, 2005 should report the pupil in FACTS. Non-public students that were evaluated, determined eligible but were not being served as of December 1 (i.e. student is not in FACTS with a Fund Code) must be reported in the new Parentally-placed Non-public Students screen in iePoint that asks for the “Number of Eligible Students in District Jurisdiction NOT Receiving Services on December 1”. A district may report eligible non-public students in this field even if the district did not provide the initial evaluation or determined eligibility.

For the 2005-06 school year only, the Director of Special Education in the resident district that evaluated and determined eligibility of parentally-placed non-public school students who were eligible to receive services in another special education district or cooperative but were not being served as of December 1, 2005 should communicate the number to the Director of Special Education of the serving district so that he or she can report this number accurately. This will allow the ISBE to calculate the FY 2007 non-public proportionate share amount for the serving district. If services begin after December 1, the serving district should code the student as Fund Code L or Fund Code P but because the start date will be after December 1 the student will not be duplicated for the non-public proportionate share calculation.

Beginning with the 2006-07 school year, the serving district will have reporting responsibility for non-public school students served via an ISP (Fund Code L or Fund Code P) regardless of the residency of the students. However, if out-of-district parents chooses to dually enroll their child, they must return to the resident district to do so. In this instance the student would be entitled to full FAPE with an IEP and therefore, the resident district would be responsible for reporting this student in FACTS (Fund Code K).

D. PROPORTIONATE SHARE SERVICES

- 1. With regard to home-school students, what is the district obligated to do for purposes of proportionate share?**

The two primary obligations districts will have toward home-school students concern timely and meaningful consultation and Child Find. First, districts will be expected to provide notice of scheduled timely and meaningful consultation meetings directly to known families of home-school students. In addition, districts will be expected to post notice of timely and meaningful consultation meetings in a local newspaper or other publication of general circulation within the district’s jurisdiction. Concerning Child Find, districts will be expected to provide appropriate notice directly to families of known home-school students making them aware of the availability of special education programs and referral procedures within the district. Such notice should also be posted in a local newspaper or other publication of general circulation within the district. For those home-school students who are identified as eligible to participate in proportionate share programs, the district’s obligation

to serve such students shall be the same as its obligation toward students who attend a non-public school on a full-time basis. Such students are further permitted to enroll and attend a public school program on a part-time basis (see below).

2. May member districts of the same cooperative aggregate proportionate share funds?

Yes they can, as long as each member district can document that the services provided to non-public school students in their respective jurisdictions was equal to or greater than the proportionate share sum allocated to each district.

3. Does a school district have the ability to choose its own method of service delivery?

Yes. Each district is permitted to decide its own method of service delivery to students who qualify for proportionate share support. Districts are reminded that they must disclose their proposed methods of service delivery during their respective timely and meaningful consultation processes with non-public schools and non-public school parent-representatives within their jurisdictions.

4. A student is eligible for services, but those services do not fall within the array of services the public school is offering under its proportionate share spending plan (as disclosed during timely and meaningful consultation). Is an ISP still required?

No. There is no requirement that an ISP be written for a student in this instance.

5. If a non-public school student is eligible to receive services and the parent is unwilling to transport the student to the site of service delivery, is this considered refusal of service such that the district has no obligation to serve the student?

Yes. However, under 34 CFR 300.456 (34 CFR 300.139 in the draft regulations for IDEA 2004) the serving district may be obligated to provide transportation to a full-time non-public school student to ensure the student's ability to participate in the services offered by the district. (Districts are reminded that the cost of transportation may be considered part of the "spend-down" of the districts' respective proportionate share.) Districts are encouraged to maintain records of their efforts to offer the student an appropriate ISP and their efforts to offer alternative transportation, either between the service-site and the non-public school or the service-site and the student's home.

6. May the local district turn over proportionate share funds to one or more non-public schools in its jurisdiction for the purpose of allowing the non-public schools to purchase services in keeping with the district's plan for spending proportionate share funds?

No. Section 612(a)(10) makes clear that a local district is required to maintain control over funds and property utilized for the purpose of providing proportionate support to parentally-placed non-public school students. See 20 USC Sec. 1412(a)(10)(A)(vii).

7. **Is the serving district obligated to provide services to parentally-placed non-public school students at the non-public school?**

No. There is no requirement for the district to provide services to parentally-placed non-public school students on-site at the non-public school, but the district is certainly permitted to do so. However, this should be discussed as part of the timely and meaningful consultation process among LEA officials, non-public school representatives, and representatives of parents of parentally-placed non-public school children with disabilities.

8. **Should an IEP be written to deliver proportionate share services to students who are attending non-public school on a full-time basis?**

No. In the case of a student who is attending a non-public school on a full-time basis, services should be set forth in an appropriate ISP. An IEP should be written and implemented only in those instances when the public district is serving a parentally-placed non-public school student who is dually enrolled (Coded as Fund Code K in FACTS) in the public school in accordance with Section 14-6.01 of the School Code, 105 ILCS 5/14-6.01. A non-public special education student receiving related services from the public school (i.e., a student who is not dually enrolled) should have an ISP written and should be reported as Fund Code L or Fund Code P in FACTS.

E. **DUAL-ENROLLMENT/DUAL-ATTENDANCE**

1. **How does the ISBE define a student who is dually enrolled under Section 14-6.01 of the School Code?**

Section 14-6.01 of the School Code provides that a district must accept non-public school students for part-time attendance in the public schools. ISBE has taken the position that a student who is dually-enrolled is one who regularly attends the public school for instruction in at least one course for credit or receives a grade granted by the public school. A student who is dually-enrolled/dually-attending the public school and the non-public school may only be served by the student's resident district. As a dual-enrollee/dual-attende, the student is entitled to a free appropriate public education (FAPE) from the resident district as well as full due process rights. However as discussed below at Question E-2, the actual amount of service delivered by the resident district may be limited by the amount of time the student is in attendance at the public school.

As a result of the provision in Section 14-6.01, non-public school students thus have one of two options (but not both) available to them to receive special education services:

- 1) They may work with their serving district (or resident district if the school is also located in the district in which the student resides) to receive proportionate share support; or
- 2) They may enroll and attend on a part-time basis at a school in their resident district in order to receive an IEP and, to the extent that the student attends the public school, a FAPE.

ISBE is, simultaneously with this Q&A document, issuing guidance on dual-enrollment/dual-attendance, via a PowerPoint document found at http://www.isbe.net/spec-ed/pdfs/proportionate_share_2004.pdf.

- 2. If the non-public school student is attending a single public school class for credit, what is the extent of the resident district's FAPE obligation?**

The resident district's FAPE obligation is that necessary to allow the student to access the portion of the day spent in the public school. The student should still have an IEP describing the full extent of services that would be made available if the student attended public school in the resident district on a full-time basis, but with appropriate language describing what, if anything, will not be provided due to the student's attendance in the non-public school. Finally, parents should be advised that if the student attends public school part-time, they will waive their right to proportionate share support.

- 3. Does a school district have the ability to deny enrollment and the right to attend on a part-time basis to a non-public school special education student who is a resident of that district?**

No. Illinois law states that non-public school students with disabilities must be afforded the opportunity to attend their public schools on a part-time basis (105 ILCS 5/14-6.01). In the event that the parents of a non-public school student present the student for part-time attendance, Section 14-6.01 indicates that the district must initiate services no later than the semester following the initial determination of special education eligibility for that student. Also, Section 14-6.01 permits the district to enter an agreement with another district for the provision of special education services if such an arrangement is deemed more convenient and economical. Student transportation to dually-attending students must be provided if deemed necessary by the IEP team based upon the nature and scope of the student's disabling condition.

F. STUDENT RECORDS

- 1. Can resident districts and serving districts share names of any student having or suspected of having a disability without parent permission?**

The School Student Records Act, Section 6(a)(2) (105 ILCS 10/6(a)(2)), permits the release of records "[t]o an employee or official of the school or school district or State Board with current demonstrable educational or administrative interest in the student, in furtherance of such interest." As a matter of courtesy, such a release of records should be accompanied by a notice to the parent that said records are being released and the school district to which the records are being disclosed. Though not strictly required, districts are strongly encouraged to follow procedures described in Section 375.70(a) (transfer of student from one school to another) when securing records from a student's district of residence.