



Illinois State Board of Education

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MEMORANDUM #05-7

To: Illinois Parents
District Superintendents
Directors of Special Education
Private Schools

From: Christopher A. Koch, Ed.D.
Assistant Superintendent for Special Education

Date: August 11, 2005

Subject: Interim Guidance for Special Education Services for Parentally Placed Private School Children with Disabilities

The new Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) made some significant changes to requirements for the provision of special education and related services to parentally placed private school children with disabilities. Generally, each local educational agency (LEA) must conduct child find, determine the proportionate share of Federal Part B funds, and provide equitable services to parentally-placed private school children with disabilities who attend private schools located in the LEA **without regard to where the children reside**. These changes became effective on July 1, 2005. This memorandum, though, offers ***interim guidance for the 2005-2006 school year only***.

Section 612(a)(10) of the IDEA 2004 addresses "Children in Private Schools." Below, we have broken down this Section by subject matter area and include our comments of clarification and guidance with respect to each such area.

DEFINITIONS

Due to on-going discussions with various stakeholders to whom this guidance memo is addressed, we offer some preliminary definitions of certain key terms to clarify the responsibilities and duties described below:

1) **Private School:**

The term "private school" shall be defined as it is described in Section 612(a)(10)(A)(ii)(I) of IDEA 2004. Specifically, this refers to privately operated *elementary and secondary schools only*. Please note that we do not interpret this term to include those private facilities which do not provide an elementary or secondary school curriculum (i.e., those facilities that do not offer instruction leading to the grant of a state-recognized elementary or secondary school diploma).

2) Child Find:

The term "Child Find" is given the definition provided in Section 612(a)(3) of IDEA 2004. Child Find, as set forth in IDEA 2004, is directed to those activities to ensure that children with disabilities "are identified, located, and evaluated, and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services."

NOTE: As described above, the obligations outlined in this memorandum pertain only to private school students who are in kindergarten through 12th grade. Notwithstanding these definitions, local school districts shall continue in their obligation to conduct Child Find for students aged 3-5 (except for those attending private kindergarten programs) in the time and manner required prior to the passage of IDEA 2004.

3) District of Residence:

The district wherein the parentally-placed private school child with a disability resides (with residency being determined in accordance with Illinois law).

4) Serving District:

The district wherein the private elementary or secondary school is located and where the child at issue attends.

PROPORTIONATE SHARE

Sec 612 (a)(10) CHILDREN IN PRIVATE SCHOOLS.—

(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.—

Sec. 612(a)(10)(A)(i) In General.—

To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program by providing for such children special education and related services in accordance with the following requirements:

(I) amounts to be expended for the provision of those services (including direct services to parentally placed private school children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

(II) In calculating the proportionate amount of Federal funds the local educational agency, after timely and meaningful consultation with representatives of private schools as described in (iii) shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private school located in the educational agency.

(III) Such services to parentally placed private school children may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.

(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of federal funds required to be expended under this subparagraph.

(V) Each local agency shall maintain in its records and provide to the State educational agency the number of children determined to be children with disabilities under this paragraph and the number of children served under this paragraph.

For the 2005-2006 school year only, the U.S. Department of Education is allowing States and LEAs to use the "best available data" to calculate the proportionate amount of their IDEA Part B funds that must be expended on services for parentally-placed private school children with disabilities attending private schools located within their jurisdiction, rather than requiring new child counts.

Since FY00 in Illinois, the allocation calculations for IDEA Flow Through are determined from three data elements: (a) base year, (b) total public and non-public enrollment, and (c) poverty. At issue in this situation is how the public and non-public enrollments are taken into consideration when the IDEA calculations are determined. The public enrollment is taken from the most recent fall housing report, and the non-public enrollment is taken from data voluntarily provided by each non-public school as reported on the Non-Public Registration Enrollment and Staff Report (ISBE 87-01). Beginning with the 2005-06 school year, this information will be entered electronically via the Illinois State Board of Education Web Application Security System (IWAS). The non-public enrollment figure does not take into account where parents reside – only the actual enrollment of a non-public school.

Local districts are reminded of their responsibility for maintenance of fiscal effort. State and local funds may not be used to supplant the proportionate amount of federal funds required to be expended.

Private schools are highly encouraged to register with the Illinois State Board of Education for inclusion of their student enrollment in the allocation calculations.

Non-Public Proportionate Share Calculation

Beginning with FY 2006 IDEA Part B Flow Through and Preschool allocations and thereafter, the Illinois State Board of Education will calculate the non-public proportionate share amount to all school districts and cooperatives. The amount will be calculated based on the percentage of all non-public school children with disabilities ages 3 – 21 (Fund Codes K and L on the Funding and Child Tracking System) divided into the total special education child count taken on December 1 and multiplied by the total IDEA Part B Flow and Preschool Grant for each district.

For FY 2006, we will use special education data from the December 1, 2004 child count. However, since this file will not be verified and closed until September 2005, districts will not be penalized for holding "timely and meaningful consultations" with the private schools without a specific discussion of the proportionate share allocated to the district (see below, "TIMELY AND MEANINGFUL CONSULTATION"). In late February or early March of 2006, we will provide estimated FY 07 non-public proportionate share information at the same time we distribute estimated IDEA Part B Flow Through funding. When the final IDEA Part B Flow Through and Preschool Grant Awards are received in

July 2006, we will provide final IDEA allocations and non-public proportionate share amounts to all school districts and cooperatives.

CHILD FIND

Sec 612(A)(10)(ii) Child Find Requirement.—

(I) in general.—the requirements of Child Find shall apply with respect to children with disabilities who are enrolled in private, including religious, elementary schools and secondary schools.

(II) Equitable participation.—the child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.

(III) Activities.—in carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for the agency's public school children.

(IV) Cost—The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local educational agency has met its obligations under clause (i).

(V) Completion period -- Such child find process shall be completed in a time period comparable to that for other students attending public schools in the local educational agency.

Notwithstanding the flexibility offered by the U.S. Department of Education regarding the calculation of "proportionate share," local school districts must, in conjunction with timely and meaningful consultation with representatives of private schools (discussed further below), conduct child find activities so that students who are parentally placed in private schools can be referred, evaluated and identified as students with disabilities. Private schools must be provided with the necessary information on how parents and school officials may initiate the process of referring students for screening and other evaluations as appropriate. Therefore, local school districts will be expected to provide notice of child find activities to private schools within their respective jurisdiction in a manner and at a time similar to the notice the local districts provide to the general public. Child find activities must be conducted in a timely manner and any evaluations completed in response to the child find activities must meet the state required timeline for completing such evaluations (60 school days). Costs of conducting child find activities for students attending private schools are not included in determining expenditures for the proportionate share obligation.

The new provisions in IDEA 2004, unlike prior revisions of the act, create an obligation for local school districts to conduct Child Find for each student attending private elementary and secondary schools within the district, regardless of the students' residency within the district. This, of course, runs contrary to existing state provisions which premise such duties solely on the residency of the students. Therefore, in an effort to comply with the requirements of IDEA 2004 and our existing state provisions, we are recommending that Child Find be undertaken in the following manner for the 2005-06 school year only (In FY 07, all aspects of Child Find will be the responsibility of the serving district (as opposed to FY 06 during which, as set forth below, evaluations are to be performed by the district of residence)):

- 1) *Each local school district shall be expected to conduct those activities necessary to identify those students who may require an initial case study evaluation for all students who attend private schools within the boundaries of the local school district.*
- 2) *Where the serving district identifies a student who requires a referral for an initial case study evaluation, the student shall be evaluated by the district of residence. In the event the student is a resident of a district other than the serving district, the serving district shall promptly make a referral for an initial case study evaluation to the district of residence. The serving district shall be expected to forward any additional information, if known, on the student to the district of residence.*
- 3) *The district of residence shall be expected to conduct all required procedures associated with the initial case study evaluation. The district of residence shall be expected to complete the evaluation within timelines prescribed by our current Illinois Administrative Code provisions pertaining to case study evaluations. Obtaining written parental consent for the evaluation shall be the primary responsibility of the evaluating district.*
- 4) *Upon completion of the evaluation, the district of residence shall be responsible for convening an eligibility conference to determine the student's eligibility for special education and related services, including the provision of appropriate notification of the conference to the parents. When scheduling the conference, the evaluating district shall be expected to extend an invitation to officials of the serving district. The conference shall be for the purpose of determining the student's eligibility only.*
- 5) *In the event the consensus of the eligibility conference attendees is to declare the student eligible for special education and related services, the documentation of such eligibility shall promptly be forwarded along with all evaluations and other relevant information to the serving district. Upon receipt, the district in which the student currently attends school will be expected to develop a services plan, as appropriate, in accordance with the district's overall plan or policy for ensuring equitable participation of private elementary and secondary school students.*

Parent requests for due process, if permitted in accordance with 34 CFR Part 300.457, shall be directed to the parent's (or student's, as appropriate) district of residence.

School districts are further advised of their ongoing requirement to maintain data in connection with their Child Find activities. As set forth in Sec. 612(a)(10)(A)(i)(V) of IDEA 2004, local school districts will be expected to maintain a running tally of the following data categories throughout the 2005-06 school year:

- (a) The total number of private school children evaluated;*
- (b) The total number of private school children identified as students with disabilities;*
and
- (c) The total number of private school children served (i.e., receiving some level of special education and related services).*

Responsibility for maintaining these tallies shall reside with the serving district. District that will be required to evaluate such children will be expected to cooperate fully in

providing data to other districts that are responsible for keeping these tallies. Reports outlining the final total in the foregoing categories shall be submitted to ISBE by no later than June 30, 2006.

At the present time, ISBE is working on developing a data-keeping procedure for obtaining the foregoing data from the school districts, and hope to provide further information as soon as possible. In the interim, school districts are urged to keep documentary data pertaining to these tallies in an orderly manner.

NOTE: *For the 2005-2006 school year, the district of residence will continue to be responsible for reporting student information on the Funding and Child Tracking System (FACTS).*

TIMELY AND MEANINGFUL CONSULTATION

Sec 612 (a)(10)(A)(iii) Consultation.—

To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding—

(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers and private school officials will be informed of the process;

(II) the determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities under this paragraph, including the determination of how the amount was calculated;

(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.

Local school districts must consult with the private schools within their district and with representatives of parents of students with disabilities who attend those schools regarding:

- 1. the child find process and how parties will be informed of that process;*
- 2. the amount of Federal funds available for the special education and related services for parentally placed private school children with disabilities, and how that amount was determined;*
- 3. the procedures that will be established by the district to provide ongoing opportunities for students with disabilities in private schools to meaningfully participate in special education and related services throughout the school year;*
- 4. the services that will be provided, where they will be provided, how the district reached this decision and why the district determined to expend funds in this manner; and,*
- 5. how, if the local school district disagrees with the views of the private school officials on the provision of services or the types of services, the local school district will provide a written explanation to the private school of the rationale for the decision made.*

In our view, the process of timely and meaningful consultation is the primary means by which local school districts will be permitted to render decisions about the manner and means by which students with disabilities in private schools may be served. We wish to emphasize our view that, in light of the language contained in Sec. 612(a)(10)(A)(iii)(III and IV) of IDEA 2004, local school districts will not be expected to provide the full range of services a private-school student might require if the student attended a public school within the district. Nonetheless, it also appears clear from the language of this Section that any decisions about the allocation of resources for services to these students cannot occur prior to the completion of the timely and meaningful consultation required by IDEA 2004.

NOTE: In our view, the language of IDEA 2004 also suggests that until such timely and meaningful consultation has taken place, private school students who have existing IEPs and service plans prior to the timely and meaningful consultation shall continue to be the responsibility of the district of residence. Thus, districts should be aware that for those students who are resident in the district but who attend private schools outside the district, the responsibility for providing services pursuant to a service plan or IEP shall rest upon the district of residence until the school district in which the private school is located has conducted its timely and meaningful consultation.

The statutory language of IDEA 2004 (and also the language of the proposed regulations) provides no explicit guidance on what constitutes “timely” consultation by a local school district. However, because we believe it is in the interest of the students and parents affected by this process to receive information and guidance as rapidly as possible, we are requiring local districts to conduct their timely and meaningful consultation by no later than November 15, 2005 (although earlier compliance with this requirement is highly encouraged). Districts are encouraged to schedule timely and meaningful consultations in September to occur in October or November. We remind local districts that it may not be possible to provide the private schools with a full answer regarding proportionate share funding by the time the consultation occurs (see above, “PROPORTIONATE SHARE”). However, local districts will be expected to provide the

private schools with proportionate share information as soon as it is provided by ISBE following the district's consultation with the private schools.

WRITTEN AFFIRMATION OF CONSULTATION

Sec 612(a)(10)(A)(iv) Written Affirmation—

When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

Local school districts must maintain documentation of timely and meaningful consultations with participating private schools signed by the representatives of such schools. If a private school does not agree to consult with the district, then the district must maintain documentation of their attempts to secure the school's participation at the consultation.

In order to secure adequate documentation of the consultation, districts will be requested to submit at a minimum the following documentation:

- (a) a copy of agenda utilized in the completion of the consultation;*
- (b) a copy of the notice form or letter utilized by the district to notify the private schools of the consultation;*
- (c) copies of all signed attestations by private school participants at the consultation; and*
- (d) if necessary, copies of all invitations provided to private school representative who either refuse to sign the attestation or fail to attend the consultation.*

ISBE has included a recommended form that districts may use in order to secure the signed attestation by private school representatives and parent representatives of participation in the consultation. (See attached, [APPENDIX A](#).) In the event that a district chooses not to use our suggested form, the district will still be expected to provide some form of documentation that establishes:

- (a) The date(s) on which the timely and meaningful consultation occurred;*
- (b) The outline of the subject areas covered during the consultation process (please refer to APPENDIX A and the five subsections outlined in the previous section, "TIMELY AND MEANINGFUL CONSULTATION"); and*
- (c) A signed and dated statement from each private school representative attesting that he/she participated in the consultation and was informed of each of the five areas required for timely and meaningful consultation.*

In the event the district is unable to secure a written attestation from one or more of the private school representatives either due to a refusal to provide said attestation or failure to attend the consultation, the district will be expected to provide documentation showing that the school(s) in question were invited to the consultation.

In order to facilitate completion of the consultation process, we urge school districts to begin the process of scheduling their consultations by no later than September. ISBE will require school districts to provide documentation described above by no later than

November 15, 2005. If a school district has not submitted its written affirmation (i.e., a dated and completed form APPENDIX A) that such consultation has occurred by November 15th, ISBE will demand submission of such documentation and may utilize appropriate sanctions for district non-cooperation.

COMPLIANCE

Sec 612 (a)(10)(A)(v) Compliance—

(I) in general.—a private school official shall have the right to submit a complaint to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

(II) Procedure.—if the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance by the local educational agency to the State educational agency and the local educational agency shall forward the appropriate documentation to the state educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may submit a complaint to the Secretary by providing the basis of the noncompliance by the local educational agency to the Secretary and the State educational agency shall forward the appropriate documentation to the Secretary.

Private school officials may file a signed, written complaint with the Illinois State Board of Education, Special Education Services, 100 North First Street, Springfield, IL 62777-0001. The complainant must allege that either the consultation was not meaningful or timely or their views were not given due consideration. The complainant should provide supporting information. The Illinois State Board of Education will investigate and issue a decision in accordance with required timelines. If the complaining party is not satisfied with ISBE's decision, then the complainant may forward the complaint to the Secretary of Education, United States Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202.

EQUITABLE SERVICES AND PUBLIC CONTROL OF FUNDS

Sec 612(a)(10)(A)(vi) Provision of Equitable Services—

(I) directly or through contracts.—the provision of services shall be provided--

(aa) by employees of a public agency ; or (bb) through contract by the public agency with an individual, association, agency, organization or other entity.

(II) Secular, Neutral, Nonideological. Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment shall be secular, neutral and nonideological.

Sec 612(a)(10)(A)(vii) Public Control of Funds—

The control of funds used to provide special education and related services, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer the funds and property.

Special education and related services that are provided by the local school district to parentally-placed private school children shall be free from religious opinions or views. All services and materials remain under the control of the local school district, even when provided in private school.

The U.S. Department of Education expects to issue a list of “Frequently Asked Questions” regarding the responsibilities of States and LEAs under IDEA 2004 to serve parentally placed private school children with disabilities. The ISBE will continue to provide clarifications on this issue as needed. If you have further questions or concerns, please contact Elizabeth Hanselman at 217/782-5589 or ehanselm@isbe.net.