

Individuals with Disabilities Education Act (IDEA) Equitable Services Toolkit

Federal Programs and Oversight

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Introduction

The Tennessee Department of Education (department) works to ensure that all students enrolled in public and non-public schools receive a high quality, equitable education. The Individuals with Disabilities Education Act (IDEA) requires local education agencies (LEAs) to provide services to children with disabilities enrolled by their parents in non-public elementary and secondary schools. Under 20 U.S.C. § 1412(a)(10)(A)(ii) and 34 C.F.R. § 300.131, the LEA where the non-public school is located is responsible for conducting child find for parentally placed non-public school children. The child find requirements for parentally placed children make clear that the LEA, after timely and meaningful consultation with non-public school representatives, must conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending non-public schools located in the LEA.

Purpose of the Toolkit

This toolkit was produced under the department, as directed by the Individuals with Disabilities Education Act (IDEA). It contains information, guidance, and materials for LEAs and non-public schools outside of the department. They are presented for the LEAs and the non-public school representatives' convenience. Further, this toolkit only addresses equitable services for eligible non-public school children, teachers, and families under the IDEA. Other laws, such as the Elementary and Secondary Education Act (ESEA) and Career and Technical Education (CTE), include other types of equitable services programs that require LEAs to provide for equitable participation of non-public school students and their teachers and other education programs. The department will address those services in a separate toolkit.

The information gained from this toolkit should enhance the collaborative efforts between public and non-public school officials. This toolkit also should encourage LEAs and non-publics to:

- Understand the requirements of the law regarding the equitable participation of eligible non-public school children, their teachers, and their families;
- Become knowledgeable about practices that enhance collaboration and help support the process of consultation and provision of services;
- Work together as partners to ensure a fair, equitable, and significant opportunity for eligible non-public school children to receive a quality education under IDEA; and
- Share best practices and models among colleagues.

Role of the Ombudsman

To help ensure equitable services and other benefits are being provided for eligible non-public school students, teachers, and other educational personnel, the state must designate an ombudsman to monitor and enforce the requirements under IDEA. Tennessee has designated the department's federal programs ombudsman to meet these IDEA equitable services requirements.

For questions regarding information in this toolkit, or any other questions related to equitable services to non-public schools, please contact:

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The Law

Under 20 U.S.C. § 1412(a)(10)(A)(ii) and 34 C.F.R. § 300.131, the LEA where the non-public school is located is responsible for conducting child find for parentally placed non-public school children. The child find requirements for parentally placed children make clear that the LEA, after timely and meaningful consultation with non-public school representatives, must conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending non-public elementary and secondary schools located in the LEA.

Providing Equitable Services to Non-Public Schools

What are Equitable Services?

Equitable services are services for parentally-placed children with disabilities attending non-profit, private elementary and secondary schools in the LEA. Tennessee also includes home-schooled students. To provide these services, IDEA states that public school LEAs must spend a portion of their special education funds (IDEA 619 and 611) on services for eligible, parentally-placed children attending private schools or home-schooled students. For the purposes of discussing IDEA equitable services, we refer to these students as non-public students.

How are services equitable?

For all programs, services to non-public schools are equitable when LEAs:

1. Assess, address, and consider the needs of eligible non-public school students, teachers, and parents;
2. Provide eligible non-public school students and teachers with an opportunity to participate in activities equivalent to the opportunity provided to public school students and teachers;
3. Begin services with eligible non-public school students at the same time as public school students;
4. Must ensure that the total amount expended by the LEA for services to eligible non-public school children is proportionate to the amount of funds generated by public students.

What is the LEA responsible for?

The LEA implements the plan to provide services, communicating with the non-public school staff as needed along the way. The LEA initiates and guides the overall process, which includes:

- **Contacting** eligible non-public schools to invite them to consult in early winter and providing enough information to enable them to make an informed decision on whether equitable services may be beneficial to their students for the upcoming year.
- **Establishing** any necessary deadlines and clearly communicating with non-public schools about expectations, deadlines, and responsibilities, as well as the consequences for not meeting them.
- **Determining** the amount of available funding based on program eligibility requirements and student data provided by the non-public school.
- **Scheduling and facilitating** meaningful consultation meetings with non-public school officials to plan services and support the non-public schools' understanding of requirements under IDEA and LEA guidelines.
- **Providing** or contracting for services that are agreed upon with the non-public school and making sure that the non-public school receives services in a timely manner.
- **Purchasing** materials, supplies, or equipment necessary to support IDEA services.
- **Evaluating** services to ensure effectiveness in addressing the needs of the eligible students that attend the non-public school.

LEAs may wish to use the **new** IDEA Proportionate Share Budget and Tracker to assist in fulfilling its obligation of Child Find, December 1 Child Count, Proportionate Share Reserve Calculation, Documentation of Services, etc.

What is the non-public school responsible for?

While the LEA serves as the fiscal agent for all equitable services purchases and services, participating non-public school officials play an important part in the process. Non-public school officials are responsible for:

- **Providing** the LEA with the non-public official contact(s). The non-public school should provide the LEA with a representative to serve in their interest during the consultation process.
- **Assisting** the LEA with the collection of needed information and data**.** Because an LEA may not have all necessary information and data needed to determine the proportionate share for the non-public school, non-public school officials may need to assist the LEA by providing information or documentation that enables the LEA to meet its responsibilities under the law.
- **Contacting** the LEA if there are questions about provision of services. Further, if a non-public school has students it believes may be eligible for equitable services and the non-public school has not been contacted by that LEA, it would be prudent for non-public school officials to contact the LEA directly to ensure that their eligible students are considered for title services.

- **Participating fully** in meaningful and timely consultation. Non-public school officials must also make a good faith effort to continue communication in a timely manner, when the LEA is consulting with the non-public school. When an LEA provides and requests information, collaboration, and confirmation of services for the non-public school, timely communication is key to reaching agreement. If the non-public school does not respond to the LEA's request(s) in a timely manner, it can be assumed that the services requested may not be granted based on the situation and program at hand, thus the non-public school will be ineligible to receive services for that fiscal year.

Allowable Activities for Eligible Non-public School Children Under IDEA

Decisions about which services and the amounts of services children with disabilities enrolled by their parents in non-public schools will receive are made during the consultation process and are based on the needs of the children designated to receive services. These children have no individual entitlement to receive some or all of the special education and related services they would receive if enrolled in a public school. (34 C.F.R. § 300.137(a)).

Under 34 C.F.R. § 300.133(a), each LEA must spend a proportionate amount of Part B funds on providing special education and related services (including direct services) to parentally placed non-public school children with disabilities. The regulations specify that the LEA makes the final decisions about the services to be provided to eligible parentally placed non-public school children with disabilities, based in part on input provided through the consultation process by appropriate non-public school representatives and representatives of parents of parentally placed non-public school children with disabilities. (34 C.F.R. § 300.137(b)(2)). These decisions cannot be made in advance of or in the absence of timely and meaningful consultation with non-public school representatives and with representatives of parents of parentally placed non-public school children with disabilities.

IDEA does not require an LEA to spend the proportionate share only for direct services. Rather, through the consultation process described in 34 C.F.R. § 300.134, a determination must be made about how the available amount of funds will be utilized so that the parentally placed non-public school children with disabilities designated to receive services can benefit from the services offered. Depending on the discussions during the consultation process, local circumstances, and the amount of funds available to expend on services for this population of children, an LEA could determine, after timely and meaningful consultation, that it will provide its population of parentally placed non-public school children with disabilities with indirect services. (34 C.F.R. § 300.134(d)(1)).

These services could include consultative services, equipment, or materials for eligible parentally placed children with disabilities or training for non-public schoolteachers and other non-public school personnel. Under 34 C.F.R. § 300.138(c)(2), special education and related services provided to parentally placed non-public school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

Timely and Meaningful Consultation

Timely and meaningful consultation occurs prior to other required activities and throughout the year. Although the initial consultation must occur prior to other required activities, additional consultation must occur subsequently and be an ongoing process. The sequence of timely and meaningful consultation is as follows:

- The LEA will initiate consultation meetings with the non-public school representatives and the parents of eligible non-public school children.
- The LEA provides an opportunity for all parties to express their views and consider others' views.
- This is a collaborative process.
- This process is ongoing throughout the year and should occur at least three times; the beginning, the middle, and the end of the school year.
- Anytime meaningful consultation occurs, the LEA obtains written affirmation of the consultation from meeting participants (as required by 34 C.F.R. § 300.135).
- The Written Affirmation does not indicate "agreement", but documents that the meeting and discussion took place. It must be signed at the conclusion of the meeting or as soon as possible thereafter.

IDEA does not specify which individuals must be included in the consultation process as representatives of parents of parentally placed non-public school children with disabilities. Determinations of which individuals should be designated as representatives of parents of parentally placed non-public school children with disabilities are best made at the State and local level. This is so the LEA, along with non-public school officials and representatives of parents, can identify and acknowledge the respective roles of those participating in the consultation process. There is nothing to prevent parents of parentally placed non-public school children with disabilities from representing themselves in the consultation process.

The meaningful consultation process includes:

- The child find process and how parentally placed non-public school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;
- The determination of the proportionate share of Federal funds available to serve parentally placed non-public school children with disabilities, including the determination of how the proportionate share of those funds was calculated;
- How the consultation process among representatives of the agency, the non-public schools, and the parents of parentally placed non-public school children will take place, including how the process will operate throughout the school year to ensure that parentally placed non-public school children with disabilities identified through the child find process can meaningfully participate in special education and related services;

- How, where, and by whom special education and related services will be provided, including a discussion of types of services, including direct services and alternate service-delivery mechanisms, as well as how the services will be apportioned if funds are insufficient to serve all children; and how and when decisions regarding services will be made; and
- How, if LEA representatives disagree with the views of the non-public school officials on the provision of services or the types of services, whether provided directly or through a contract, the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to adopt the recommendations of the private school officials. (34 C.F.R. § 300.134(a)–(e)).

Records of Meaningful Consultation

When timely and meaningful consultation has occurred, the LEA where non-public elementary schools and secondary schools are located must maintain documentation that the consultation has occurred, including a written affirmation signed by the representatives of the participating non-public schools, as required by 34 C.F.R. § 300.135.

Other examples of documentation include meeting agendas, attendance sheets, and written records regarding topics addressed and decisions made. The requirements also apply to consultations conducted virtually. The record retention requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards are located at 2 C.F.R. § 200.334. Another way to document participation in the consultation process is to gather signatures from participants at the end of each consultation meeting. Since the consultation process is ongoing throughout the school year, maintaining copies of the written affirmation forms obtained during each of the consultation meetings is one way to help document that the consultation process has occurred throughout the school year.

If the representatives of participating non-public schools do not provide the written affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the state education agency (SEA). (34 C.F.R. § 300.135(b)). As required by 34 C.F.R. §§ 300.149(a) and 300.600(b)(2), the SEA is responsible for ensuring that LEAs meet all program requirements under Part B of IDEA. This responsibility includes carefully reviewing the documentation to ensure that the LEA made reasonable efforts to meet its obligation to consult in a timely and meaningful way with private school officials and representatives of parents of parentally placed non-public school children with disabilities. (34 C.F.R. § 300.134). If the LEA has not obtained a written affirmation signed by appropriate non-public school officials, the SEA may request that the LEA provide a reason for the lack of affirmation. If the reason is that there is a disagreement between the LEA and non-public school officials, the SEA could facilitate resolution of the differences.

Child Find Guidance/Student Eligibility for IDEA Equitable Services

The IDEA, Part B regulations define parentally placed non-public school children with disabilities as children with disabilities under 34 C.F.R. § 300.8, enrolled by their parents in non-public, including religious, schools or facilities that meet the definition of elementary school in 34 C.F.R. § 300.13 or secondary school in 34 C.F.R. § 300.36. This definition does not include children with disabilities placed in or referred to private schools by public agencies who are covered under 34 C.F.R. §§ 300.145 through 300.147. (34 C.F.R. § 300.130).

Child find activities for non-public school students by the LEA must be comparable to those conducted for public school students. Child find for non-public school students is the process for identifying all eligible students who attend a non-public school in the LEA. The LEA must provide non-public schools and families of non-public school students with information describing how students with disabilities who are eligible for special education can access publicly funded evaluations and special education services. The obligation to conduct child find, including individual evaluations, exists independently from the obligation to provide equitable services. The costs of child find activities, such as evaluations, may not be considered in determining whether the LEA has spent an appropriate amount on providing special education and related services to parentally placed non-public school children with disabilities. (34 C.F.R. § 300.131(d)).

Child Count

Local Educational Agencies must determine the number of eligible non-public school students educated within the Local Educational Agency through child find and the consultation process. The child count is the number of eligible students with disabilities, not the number of such students who have or are receiving services. Child count determines the number of students to include for the proportionate share calculation submitted with the subsequent year IDEA grant applications.

To accurately count the non-public school special education population attending schools in the LEA and home-schooled in the LEA, the following information is needed from each non-public school:

1. Supporting documentation (e.g. previous IEP or eligibility report) verifying eligibility of parentally placed students
2. Names of the children
3. Non-public school representatives must obtain consent from parents prior to sharing student information. LEAs should encourage non-public school representatives to come prepared to the consultation meeting with supporting documentation of student's eligibility. A list of student names or a total number of students alone is not sufficient documentation.
4. Since child count is time sensitive, between Oct. 1 and Dec. 1 (34 C.F.R. § 300.133) each year, LEAs can impose deadlines for receipt of this documentation.

5. The number of eligible parentally placed students attending non-public schools in the LEA in an elementary or secondary school. This includes:
    - students who live in the LEA and attend a non-public school in the LEA;
    - students who live outside the LEA but attend a non-public school in the LEA;
    - students who live in the LEA and are home schooled in the LEA; and
    - out-of-state students who attend a non-public school located in the LEA.

Child Find as an Ongoing Process

It is important to remember that child find is an ongoing process. Therefore, if a child who is enrolled by his or her parents in a non-public school without having been previously identified as a child with a disability under 34 C.F.R. § 300.8, is suspected of having a disability during the school year, the LEA where the non-public school is located is responsible for ensuring that the child is evaluated, subject to parental consent as defined in 34 C.F.R. § 300.9, consistent with the requirements in 34 C.F.R. §§ 300.300 through 300.311. In addition, it is possible that a child who was previously evaluated by another LEA and was not found eligible for special education and related services may be enrolled by his or her parents in a non-public school located in a different LEA where the child is later evaluated and found eligible for special education and related services.

Eligible Students

In Tennessee, families have several non-public options for educating their children. ***Each option carries different legal requirements and may affect how the student is viewed for IDEA equitable services.***

Non-Profit Private School (Category I, II, III, IV, V)

A non-profit private school is a privately operated educational institution governed by a nonprofit organization and is not operated for the purpose of generating profit. These schools are typically governed by a board of directors, religious organization, or independent governing body and are funded through a combination of tuition, donations, grants, fundraising efforts, and other private sources. Students are enrolled in the private school, which is responsible for providing educational instruction, maintaining student records, and ensuring compliance with applicable state requirements for non-public schools.

Equitable Services - Students enrolled in a non-profit private school are considered parentally placed private school children for purposes of IDEA equitable services. Under 34 C.F.R. § 300.131(a), the LEA of School Location is responsible for conducting child find activities, evaluating eligible students, consulting with private school officials and parents, and providing equitable services to students with disabilities who are enrolled by their parents in the private school.

Example: Student lives in District A and attends a non-profit private school located in District B. District B is the LEA of School Location and is responsible for child find, evaluation, consultation, and offering IDEA equitable services if the student is determined eligible. District A remains the LEA of Residence but is not responsible for providing IDEA equitable services while the student is enrolled in the private school in District B. However, the LEA of Residence (District A) is responsible for conducting child find if the student's family expresses interest in returning to public school and receiving an offer of FAPE. See U.S. Dep't of Educ., "Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools," Questions A-4, A-9, and A-10 (last rev. Feb. 2022).

Independent Homeschool

An independent homeschool is operated directly by the parent or guardian, who serves as the teacher of record and is responsible for meeting all statutory requirements. Parents must submit a notice of intent to their local school district and comply with attendance and testing requirements established under Tennessee law. The student is not enrolled in a public or private school but is instead educated through a parent-directed homeschool program. Many independent homeschool families receive support from homeschool associations, cooperatives, curriculum providers, or legal advocacy organizations; however, participation in these organizations does not change the student's status as an independent homeschool student.

Equitable Services – Independent homeschool students are recognized as parentally placed non-public school students for the purpose of IDEA equitable services. Under 34 C.F.R. § 300.131(a), the LEA of School Location is responsible for IDEA equitable services. Since the LEA of Residence and LEA of School Location are the same, only one LEA will be considered when offering IDEA equitable services to eligible students.

Example: Student lives in District A. District A received an Intent to Homeschool form from parents. Parents are operating an independent homeschool. District A would conduct child find, evaluate, and offer IDEA equitable services if the student is found eligible.

Church-Related Umbrella School (Category IV)

Church-related Umbrella School as defined in Tenn. Code Ann. § 49-50-801. These schools are approved non-public schools and provide oversight, recordkeeping, and administrative support for families educating their children at home. Although parents typically provide most of the direct instruction, the student is enrolled in the church-related school rather than operating as an independent homeschool student. Depending on the school, services may include transcript management, academic counseling, curriculum guidance, and graduation documentation.

Equitable Services – Students attending a Church-Related Umbrella School are enrolled in the non-public school and are considered parentally placed non-public school students. Under 34 C.F.R. § 300.131(a), the LEA of School Location is responsible for IDEA equitable services. Equitable services may be provided only if the school is considered non-profit. For a full list of school locations and non-profit status, please visit the TDOE Non-Public Schools page.

Example: Student lives in District A. Parents enroll student in a homeschool umbrella program from a non-profit, church-related school located in District B. Even though the parent will typically provide most of the instruction, the church-related school provides the curriculum and oversight. It is the LEA of School Location (District B) that would conduct child find, evaluate, and offer IDEA equitable services if the student is found eligible. However, the LEA of Residence (District A) is responsible for conducting child find if the student's family expresses interest in returning to public school and receiving an offer of FAPE. See U.S. Dep't of Educ., "Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools," Questions A-4, A-9, and A-10 (last rev. Feb. 2022).

Accredited Online School (Category III)

While not considered a homeschool, parents may elect to enroll their student in an approved accredited online school. These schools deliver instruction through a virtual platform and maintain responsibility for curriculum, grading, and student records. While students may complete their coursework from home, Tennessee does not recognize accredited online school enrollment to be independent homeschooling under the state's homeschool statute. Instead, the student is enrolled in the online school itself.

Equitable Services – Students attending an accredited online school are enrolled in the virtual non-public school and are considered parentally placed non-public school students. Under 34 C.F.R. § 300.131(a), the LEA of School Location is responsible for IDEA equitable services. Equitable services may be provided only if the school is considered non-profit. For a full list of school locations and non-profit status, please visit the TDOE Non-Public Schools page.

Example: Student lives in District A. Parents enroll student an accredited online school outside of the state of Tennessee. Even though the student will be participating in the virtual school from home, it is the out-of-state district that would conduct child find, evaluate, and offer IDEA equitable services if the student is found eligible. However, the LEA of Residence (District A) is responsible for conducting child find if the student's family expresses interest in returning to public school and receiving an offer of FAPE. See U.S. Dep't of Educ., "Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools," Questions A-4, A-9, and A-10 (last rev. Feb. 2022).

Obligation to Make Offer of FAPE

The LEA where a child attends a non-public school is responsible for ensuring equitable participation in programs assisted or carried out under IDEA, Part B. If a parentally placed non-public school child with a disability also resides in the LEA where the non-public school is located, then that LEA would also be responsible for making Free Appropriate Public Education (FAPE) available to the child, unless the parent makes clear his or her intent to keep the child enrolled in a non-public elementary or secondary school located in that LEA. If a parentally placed non-public school child with a disability resides in a different LEA, the LEA in which the non-public elementary or secondary school is located is not responsible for making FAPE available to that child; rather, the LEA of the child's residence would be responsible for making FAPE available to that child. If a determination is made through the child find process by the LEA where the non-public school is located that a child has a disability under 34 C.F.R. § 300.8 and needs special education and related services, and a parent makes clear his or her intent to keep the child enrolled in the non-public elementary or secondary school located in that LEA, then the LEA where the child resides is not required to make FAPE available to the child. On the other hand, if the parent chooses to accept the offer of FAPE and enroll the child in a public school in the LEA where the child resides, then the LEA where the child resides is obligated to make FAPE available to the child.

Individual Service Plans (ISP)

Children with disabilities enrolled in public schools or who are publicly placed in private schools or facilities by public agencies are entitled to FAPE and must receive the full range of services under Part B of IDEA. (34 C.F.R. §§ 300.101, 300.146, and 300.201). These services are determined by the child's IEP team and are necessary to meet the child's individual needs and to provide FAPE to the child. Generally, the IEPs for these children will be more comprehensive than services plans developed for parentally placed non-public school children with disabilities who are designated to receive services. This is because no parentally placed child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. (34 C.F.R. § 300.137(a)). Further, a services plan should reflect only the services offered by the LEA to a parentally placed private school child with a disability designated to receive services. In addition, a services plan, to the extent appropriate, is required to meet the IEP content requirements described in 34 C.F.R. § 300.320 or, when applicable, for children aged three through five, the individualized family service plan (IFSP) requirements described in 34 C.F.R. § 303.344, and only in relation to the services that are to be provided. (34 C.F.R. § 300.138(b)(2)).

The LEA where the private school is located must initiate and conduct meetings to develop, review, and revise a services plan for a parentally placed private school child with a disability designated to receive services. The LEA must ensure that a representative of the religious or other private elementary school or secondary school attends each meeting. If the representative cannot attend, the LEA must use other methods to ensure participation by the religious or other private school,

including individual or conference telephone calls. (34 C.F.R. § 300.137(c)). The services plan must, to the extent appropriate, be developed, reviewed, and revised consistent with 34 C.F.R. §§ 300.321 through 300.324. (34 C.F.R. § 300.138(b)(2)(ii)).

Calculating the IDEA Proportionate Share

To meet the requirement of 34 C.F.R. § 300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally placed non-public school children with disabilities:

1) For children aged three through 21, an amount that is the same proportion of the LEA's total subgrant under 20 U.S.C. § 1411(f) as the number of non-public school children with disabilities aged three through 21 who are enrolled by their parents in non-profit, private schools including religious, elementary schools, secondary schools, and independent homeschools located in the LEA, is to the total number of children with disabilities in its jurisdiction aged three through 21.

Example of Formula To Determine Amount For IDEA, Part B (3-21) Equitable Services	
A1: LEA SWD 3-21 Enrollment	99
A2: Participating Non-public Schools Enrollment for parentally placed SWD 3-21	14
A3: Total Enrollment = A1 + A2	113
B. LEA Allocation	
B1: Total LEA Allocation	$150,000
C. Per Pupil Rate	
C1: B1 divided by A3	$1,327
D. Equitable Services	
Amount LEA must reserve for equitable services for IDEA, Part A = A2 x C1	$18,578

2)

i) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under 20 U.S.C. § 1419(g) as the number of parentally placed non-public school children with disabilities aged three through five who are enrolled by their parents in a non-public, including religious, elementary school located in the LEA served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.

ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally placed non-public school children with disabilities enrolled by their parents in non-public, including religious, elementary schools, if they are

enrolled in a non-public school that meets the definition of elementary school in 34 C.F.R § 300.13.

iii)

Example of Formula To Determine Amount For IDEA Preschool (3-5) Equitable Services	
A1: LEA SWD Pre-K 3-5 Enrollment	10
A2: Participating Non-public Schools Pre-K Enrollment for parentally placed SWD 3-5	3
A3: Total Enrollment = A1 + A2	13
B. LEA Pre-K Allocation	
B1: Total LEA Pre-K Allocation	$4,000
C. Per Pupil Rate	
C1: B1 divided by A3	$307
D. Equitable Services	
Amount LEA must reserve for equitable services for IDEA, Part A = A2 x C1	$921

In Tenneseee, the SEA calculates the proportionate share for LEAs based on the data provided through the annual Parentally Placed Proportionate Share Reserve Calculation worksheet in ePlan. The LEA will use two reports when compiling the necessary data:

1. Final Child Count (Dec. 1) Report found in TNPulse
2. Final All Student Export from PCG (provided by the Data & Research team)

Students will be counted in Row A (students eligible for IEPs) or Row B (students eligible for ISPs). The following charts highlight how students are divided for the purpose of the calculation.

IDEA Preschool (ages 3-5) Proportionate Share Reserve Calculation

Children to Count in Row A	**Children to Count in Row B**	**Children Not Counted**
The child (ages 3-5) has been evaluated for special education services and meets criteria for at least one of IDEA's 14 disability categories and is **served**	The child (ages 3-5) has been evaluated for special education services and meets criteria for at least one of IDEA's 14 disability categories and is **served**	The child has not been evaluated for special education services and found eligible as of Dec. 1. The child has been evaluated but does not

through an IEP or eligible for an IEP as of Dec. 1. This includes children (ages 3-5) who: • Attend an LEA-operated elementary school, preschool program (e.g., Voluntary Pre-K, Title I preschool, comprehensive preschool) **-OR-** • Attend a non-LEA operated program (e.g., Head Start, private preschool, child care center, family child care home) **-OR-** • Receive drop-in therapy services. **-OR-** • Placed in a private school by the LEA for the purposes of FAPE.	**through an ISP or eligible for an ISP as of Dec. 1.** This <u>only</u> includes children who were: Parentally placed in a non-profit, private school: • within the LEA boundaries **- AND-** • that meets the definition of an "elementary school" in Tenn. Code Ann. § 49-6-301.	meet the criteria for at least one of IDEA's 14 disability categories. The child is receiving services through Part C Extended Services Option through the TN Early Intervention System (TEIS).

Table for IDEA Part B (3-21) Proportionate Share Reserve Calculation

Children to Count in Row A	**Children to Count in Row B**	**Children Not Counted**
The child has been evaluated for special education services and meets criteria for at least one of IDEA's 14 disability categories, and **served**	The child has been evaluated for special education services and meets criteria for at least one of IDEA's 14 disability categories, and **served**	The child has not been evaluated for special education services and found eligible as of Dec. 1.

through an IEP or eligible for an IEP as of Dec. 1. This includes children (ages 3-21, *which includes students counted for IDEA Preschool Reserve Calculation*) and who attend: Public school program within the LEA boundaries **-OR-** has been placed in a private school by the LEA for the purposes of FAPE.	**through an ISP or eligible for an ISP as of Dec. 1.** This includes children (ages 3-21, *which includes students counted for the IDEA Preschool Reserve Calculation)* and who were: Parentally placed in a non-profit, private school within the LEA boundaries **-AND-** • meets the definition of an "elementary school" or "secondary school" in Tenn. Code Ann. § 49-6-301. • **-OR-** is a K-12 student being homeschooled • **-OR-** participating in a non-profit, private school umbrella program within the LEA boundaries **includes students attending private school within the LEA boundaries with an Individual Education Account (IEA).*	The child has been evaluated but does not meet the criteria for at least one of IDEA's 14 disability categories. The child is receiving services through Part C Extended Services Option through the TN Early Intervention System (TEIS).

Complaints

Statutory Requirement

Pursuant to 20 U.S.C. § 1412(a)(10) of the Individuals with Disabilities Education Act (IDEA), a non-public school official has the right to file a written complaint with the state education department ombudsman asserting that a LEA:

- did not engage in consultation that was meaningful and timely, or

- did not give due consideration to the views of the non-public school.

What must be included in a complaint?

Non-public school officials filing a complaint with the ombudsman concerning equitable services under IDEA must do so in writing and utilize the form provided with this document that requires the following information:

- full name, address, email address, and telephone number of individual(s) or organization(s) filing the complaint;
- a basis of the non-compliance and a description of the situation or allegation, including whether or not the LEA engaged in consultation that was meaningful and timely, or gave due consideration to the views of the non-public school officials;
- the name of the LEA the complaint is being filed against and the names of any other agencies or employees involved;
- a statement identifying which title requiring equitable services has been allegedly violated;
- all facts supporting the allegation; and
- efforts made to resolve the complaint with the LEA.

Where should a complaint be sent?

Complaints must be signed by the individual(s) or organization(s) filing the complaint and copied to the LEA. Complaints must be sent to the department to the attention of the ombudsman via email to Michelle.Harless@tn.gov.

What happens to a complaint after it is received?

A written complaint will be promptly acknowledged and investigated. Appropriate program staff, including the ombudsman, will conduct a review of the complaint and notify the complainant of receipt. If necessary, an on-site review may be conducted. If appropriate, additional information may be gathered and forwarded to other appropriate offices or organizations.

If additional information is needed, the complainant and the LEA will be contacted. For this reason, a telephone number, address, and email address of the complainant must be included with the complaint. Failure to provide a telephone number, mailing address, and email address could result in the department not being able to adequately respond to the complaint.

Within forty-five (45) calendar days of receipt of the complaint, the ombudsman will investigate and send a written finding of fact to the complainant and the LEA.

If areas of noncompliance are found, corrective action will be required and timelines for completion indicated. All parties will be informed of the areas of noncompliance and the required corrective actions.

How can a complaint decision be appealed?

A. The complainant can appeal the decision by the ombudsman by filing an appeal with the U.S. Secretary of Education within thirty (30) calendar days after the resolution of the complaint. If the forty-five (45) day time limit for response by the ombudsman has passed without a decision, the deadline for filing an appeal is thirty (30) calendar days after the forty-five (45) day deadline.
B. The appeal to the U.S. Secretary of Education must be accompanied by a copy of the resolution by the ombudsman and a complete statement of the reasons for an appeal.
C. The U.S. Secretary of Education shall investigate and resolve the appeal no later than ninety (90) calendar days after receipt of the appeal.

Additional Resources

- OSERS Q&A on Serving Students Parentally Placed in Private Schools
- Non-Public Schools Intent to Participate Form for IDEA Programs
- IDEA Affirmation of Meaningful Consultation
- IDEA Equitable Services Complaint to Ombudsman
- **New** Written Procedure for Serving Parentally Placed Non-Public School Students (template)
- **New** IDEA Proportionate Share Budget and Services Tracker

Frequently Asked Questions (updated 6/4/26)

1. **Are all private schools in the geographic catchment area invited to the same consultation meeting?**
   Not necessarily, but they can be. It is not a requirement that all private schools in the geographic catchment area are invited to the same consultation meeting. Meetings are ongoing and scheduled throughout the year. There can be as many separate meetings as desired, or there could be one large meeting for all each time you meet. This is the Local Educational Agency's decision.

2. **Are the home-school parents invited to the same timely and meaningful consultation as the private school representatives and parents?**
   Home-school parents may be invited to the same consultation meeting or the Local Educational Agency may convene separate meetings.

3. **Do we have to consult three times for each school?**
   Local Educational Agencies are responsible for initiating consultation meetings with private school representatives, representatives of the parents of eligible parentally-placed students, and parents of eligible home-schooled students. TDOE recommends consultation meetings occur at least three times each year – at the beginning, the middle, and the end of the school year, but it is up to the Local Educational Agency to determine how many meetings are necessary to meet its legal obligations under the IDEA.

4. **It seems most of the information on the draft written affirmation form is not relevant after the first consultation. Is that the case?**

Keep in mind that while consultation meetings must always include the required topics, depending on the time of year, the scope of conversation about those topics may vary throughout the year. For example, a consultation meeting taking place in the middle of the school year may address the following aspects of the required topics:

- Child find – review how child find is being implemented so far in the year and whether changes are needed;
- Determination of Proportionate Share – review the calculation and expected expenditure for the year, and how expenditure is progressing (including spend down reports);
- Consultation process – review the schedule for the next consultation meeting(s) for the remainder of the year; and
- Determination of services – discussion the status of service provision and whether any adjustments are needed for the remainder of the year.

5. **Do we need to have an affirmation form signed by each non-public school representative every time we talk to them? And, is documenting the communication enough for subsequent consultations (i.e. just a copy of the email sent, or sent and response emails?**

   A signed affirmation form is required any time meaningful consultation occurs where the required topics are discussed with the non-public school representative. A meeting sign-in sheet is not sufficient documentation alone. Written affirmation does not indicate "agreement", but that the meeting and discussion of required topics took place. The affirmation must be signed by participants at the end of the meeting or as soon as possible thereafter.

   Additional communication with the private schools, parents, and parents of home-schooled children outside of the consultation meetings (e.g., emails, phone conversations, services plan meetings, etc., including discussion of specific students' needs) can and should continue throughout the year. Documentation of these communications should be kept on file for monitoring purposes.

6. **Is Child Find and Child Count the same thing?**

   No. Child Find and Child Count are are two different requirements.

   - Child Find 34 CFR § 300.131
   - Child Count: 34 CFR § 300.133

7. **How do we know the number of parentally-placed private school students who do not live in our LEA but go to school in our LEA?**

   An LEA will know the number of eligible resident and non-resident parentally-placed private school students attending school in their LEA and home-schooled in their LEA **after timely and meaningful consultation with representatives of the private schools in its LEA, and representatives of parents of students attending private schools and representatives of home-school parents.** At that consultation meeting, the LEA must review the child find process. Through the child find process and consultation, the LEA should obtain the names and other information regarding eligible or potentially eligible students from the private school representatives, representatives of the parents of parentally-placed private school students and representatives of home-school students. The

LEA must verify students' eligibility for special education and not simply accept a number or assertion of eligibility from a representative. This means that the LEA could conduct an initial evaluation or a reevaluation of a student to determine if the student is eligible for special education, or the LEA could also accept evidence that the student has already been found eligible by another LEA, i.e., an IEP. To facilitate gathering this information in a timely manner, an LEA can tell the private schools that it requires specific documentation by a date certain to allow for the child count to be completed timely within the required child count window.

8. **If a child is turning 6 on Dec. 2, how are they counted for Fund Code 619?**
   If on that date of the count, the child is still five years old and attending a school that meets the definition of an elementary school in your LEA, then the child will count for both the 619 and the 611 grants. If on the date selected for child count the child has turned six years old, then the child is only counted for the 611 grant.

9. **Is a private elementary school the same or different from a private preschool?**
   A private elementary school that includes PK-K is not the same as a private preschool. For calculating the proportionate share amount of IDEA funds to be spent of parentally-placed private school children under both 611 and 619 grants, **the eligible preschool aged children to be counted are those enrolled by their parents in private, including religious and independent, schools or facilities in the LEA that meet the definition of an elementary school.** Stand-alone private preschools or private childcare centers that do not offer grades 1 or above do not meet this definition, and eligible preschool aged children attending those programs are not included in the LEA's equitable services child count under either grant.

10. **What parentally placed non-public school students must be counted and served under IDEA equitable services?**
    Under IDEA, the only students who must be included for equitable services calculations are those students who have been 1) identified as eligible under one of the 14 federally recognized disabilities and 2) enrolled by their parents in a private elementary or secondary school or home school within the LEA jurisdiction.

Characteristics of an Eligible Student for the Purpose of Calculating Proportionate Share	Examples of Students Not Counted for the Purpose of Calculating Proportionate Share
Child between 3 and 21 years old, enrolled by parent in a non-profit private school or home school that **meets the definition of an elementary or secondary school** as defined by Tenn. Code Ann. §49-6-301 and is within the LEA boundaries.	Child is enrolled in a private school **outside** the boundaries of the LEA.
	Child was placed in a private school **by the LEA** as part of providing FAPE.

Child has been evaluated for special education services and meets criteria for **at least one** of IDEA's 14 disability categories	Child attends a **for-profit** private school.
	Child is receiving services as part of TN Early Intervention System (**TEIS**).
Child was found **eligible** for ISP by Dec. 1	Child was **not** found eligible for ISP by Dec. 1

11. **What about eligible students who are attend a private school just outside the Local Educational Agency in a bordering town? These students are our residents; how are they counted?**
    Students who reside in the LEA but attend a private school in another LEA are not counted in the resident LEA's IDEA equitable services child count or calculation. (As residents of your LEA and under state law, the Local Educational Agency would still provide all IEP-related services. This has no bearing on the Local Educational Agency's IDEA obligation, however, unless the student attends a private school located in the LEA where they live.)
    The LEA where the student attends the private school counts that student as non-resident parentally-placed student for its equitable services child count.

12. **Are eligible private school students who attend a private school and have refused services still included in the calculation of proportionate share? If so, can these funds benefit private school students in another school in the LEA?**
    Yes, eligible private school students who attend a private school in the LEA and have refused services are still included in the child count and calculation of proportionate share. Consistent with federal law, the students remain eligible for up to three years until reevaluation takes place. Therefore, even if the student's parents refuse an offer of equitable services, the student will remain in the LEA's child count for the entire period of eligibility.

    The LEA is ultimately the decision maker of how best to use those funds for the pool of eligible students who are privately educated within the geographic boundaries of the LEA, following meaningful consultation with private schools and home school representatives and private school parents. If the LEA has other eligible parentally-placed students attending school in the Local Educational Agency, then, yes, the funds can be used for those eligible students.

13. **Is it possible for a parent to request evaluations from the LEA where the private school is located as well as the LEA where the child resides?**
    Yes. Both LEAs are required to conduct an evaluation if requested to do so by the parent and if the LEA suspects the child has a disability under IDEA, because these evaluations are conducted for different purposes. If the parent requests the LEA of the child's residence to conduct an evaluation for purposes of making FAPE available to the child, that LEA must conduct the evaluation. If the parent requests the LEA where the private school is located to conduct an evaluation for purposes of determining whether the child could be eligible for equitable services, that LEA must conduct the evaluation. Even though these evaluations are

conducted for different purposes, the Department does not believe that the child's best interests would be served when separate evaluations are conducted by two LEAs. As a practical matter, one LEA may not know that a parent also requested an evaluation from another LEA. Note that 34 C.F.R. § 300.622(b)(3) requires parental consent for the release of information between LEAs about parentally placed non-public school children. Further, subjecting a child to repeated testing by separate questions and answers on serving children with disabilities placed by their parents in non-public schools in close proximity of time may not be the most effective or desirable way to ensure that the evaluations are meaningful measures of whether a child has a disability, or of obtaining an appropriate assessment of the child's educational needs.

14. **If the LEA where the private elementary school or secondary school is located conducts an evaluation on a child and the parent disagrees with that evaluation and wishes to request an independent educational evaluation (IEE) at public expense, which LEA is responsible for the IEE?**
    The parent has the right to an IEE, consistent with the requirements in 34 C.F.R. § 300.502, if the parent disagrees with an evaluation conducted by the public agency, including if the parent believes the child was not evaluated in all areas related to the child's disability. Therefore, if the LEA where the non-public school is located conducted the evaluation, and if the parent disagrees with that evaluation, the parent has the right to request an IEE from that LEA at public expense. A parent is entitled to only one IEE at public expense each time the LEA conducts an evaluation with which the parent disagrees. 34 C.F.R. § 300.502(b)(5).

15. **What other options are available to the parent of a parentally placed non-public school child if he or she disagrees with the initial evaluation or reevaluation of the child?**
    Under 34 C.F.R. § 300.140(b), the parent of a child with a disability who disagrees with the child's evaluation or reevaluation may file a due process complaint to request a due process hearing with the LEA where the non-public school is located. Further, if the child's parent disagrees with the results of an initial evaluation or reevaluation conducted by that LEA, the child's parent may file a State complaint pursuant to 34 C.F.R. §§ 300.151 through 300.153.

16. **Why do LEAs need to conduct a separate proportionate share child count and calculation for students ages 3-5 under the 619 grant, given that students ages 3-5 are already included I the proportionate share child count and calculation under the 611 grant for ages 3-21? Are we counting kids twice?**
    The 611 grant and the 619 grant are two separate sources of federal funds made available to the states to assist them in providing special education and related services to children with disabilities. The 611 grant funds are designated for services to eligible students ages 3-21 and the 619 funds are designated to serve eligible students ages 3-5. The 619 grant is a supplementary grant focused on the preschool population. Because services for eligible students ages 3-5 are funded and provided for under both grants, the IDEA prescribes that LEAs must annually conduct a proportionate share child count and calculation for parentally-placed eligible students ages 3-5 who attend a private preschool program that meets the definition of an elementary school for both grants.

17. **Can the LEA give the proportionate share funds to the non-public school to provide equitable services?**
    No. The control of funds used to provide special education services and the control of materials, equipment, and property purchased with those funds is the sole responsibility of the public LEA. With regard to personnel, 34 C.F.R. § 300.142 states that the LEA "may use funds available under special education grants to pay for the services of an employee of a non-public school to provide services…if the employee performs the services outside of his or her regular hours of duty, and the employee performs the services under supervision and control."

18. **Can families receive some of their services at their non-public school when funded by proportionate share and the rest of their services at the local public school?**
    Yes, the LEA can provide services using federal funds to students at the location of the non-public school, in another location, or at the public school. The terms of service and their location are determined after consultation.

19. **What happens if the LEA does not use all of the proportionate share of IDEA or IDEA Pre-K funds by the end of the fiscal year?**
    If a LEA has not expended its proportionate share minimum obligation of federal funds for either grant by the end of the fiscal year, the LEA will carry over the remaining funds for special education and related services for non-public school students for one year.

20. **What if the LEA cannot spend the proportionate share funds after the one-year carry-over expires?**
    LEAs should make every effort to spend the proportionate share funds each year, including any carry-over from the prior year. If, after the carry-over period, the LEA is unable to expend the entire proportionate share of funds due to exceptional circumstances, and assuming the LEA has complied with all requirements in 34 C.F.R. §§ 300.129 through 300.144 the LEA may use the unexpended funds—at the end of the period during which the funds may be spent on parentally placed non-public school children—to pay for other allowable expenditures. *See* U.S. Dep't of Educ., "Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, Question O-5 (last rev. Feb. 2022). LEA should document and retain records of all efforts made, even if unsuccessful, to spend the proportionate share funds.

21. **If a Local Educational Agency has leftover equitable services funds and wanted to provide professional development for private school teachers, is this okay?**
    Yes, professional development for private school teachers is an acceptable way to spend funds set aside for equitable services for parentally-placed private school students following meaningful consultation about expenditures. Though the LEA must first consider direct services for eligible students, it is acceptable to spend funds on indirect services such as professional development. Professional development must be responsive to the needs of the pool of eligible private school students. If the professional development is intended to meet the needs of a specific student(s), then this indirect service should be documented on a services plan for that student(s).

22. May an LEA provide services to parentally placed non-public school children with disabilities that are in addition to those services it must provide as equitable services under IDEA?

Yes. IDEA does not prohibit a State or LEA from using additional State or local funds to provide special education or related services to parentally placed non-public school children with disabilities that are in addition to the services required in 34 C.F.R. §§ 300.130 through 300.144, consistent with State law or local policy. Additionally, as long as the LEA meets all the other requirements of IDEA, including providing FAPE to children with disabilities enrolled in public schools, it is permissible for the LEA to spend more IDEA, Part B funds than the proportionate amount of IDEA, Part B funds on providing special education and related services to children with disabilities placed by their parents in private schools.

While a State or LEA may choose to provide additional special education and related services to parentally placed non-public school children with disabilities with State and local funds, the LEA also must continue to calculate and expend the required proportionate share of IDEA Part B funds to provide special education and related services, including direct services, to parentally placed non-public school children with disabilities in accordance with the formula in 34 C.F.R. § 300.133(a). State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally placed private school children with disabilities. 34 C.F.R. § 300.133(d).

23. May an LEA require a non-public school to implement a response to intervention (RTI) process before the LEA evaluates a parentally placed non-public school child?

No. The IDEA and its implementing regulations at 34 C.F.R. §§ 300.301 through 300.311, establish requirements for an LEA when conducting an initial evaluation to determine if a child qualifies as a child with a disability under Part B. These requirements do not apply to non-public schools. Specific learning disability is a statutory term and is also defined in 34 C.F.R. § 300.8(c)(10). *See also 20 U.S.C. § 1401(30).* Examples include conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (34 C.F.R. § 300.8(c)(10)). IDEA requires States to adopt criteria for determining whether a child has a specific learning disability, and these criteria must permit, among other things, the use of a process based on the child's response to scientific, research-based intervention (RTI). (34 C.F.R. § 300.307(a)(2)). Thus, although IDEA permits an LEA to use RTI in evaluating a child suspected of having a specific learning disability, it does not require the LEA to use RTI. Even if a State's criteria permit an LEA to use RTI in evaluating a child suspected of having a specific learning disability, IDEA does not require an LEA to use RTI for a parentally placed child attending a non-public school located in its jurisdiction. Further, it would be inconsistent with the IDEA evaluation provisions in 34 C.F.R. §§ 300.301 through 300.311 for an LEA to delay the initial evaluation because a private school has not implemented an RTI process with a child suspected of having a learning disability and has not reported the results of that process to the LEA.