#### IDEA Proportionate Share Quick Reference Guide\* \*For private school representatives, parents of parentally-placed private school students, and parents of home school students

## Overview

Local education agencies (LEAs, also referred to in Massachusetts as school districts) have an obligation to locate and evaluate students with disabilities enrolled by their parents in private schools located within the LEAs boundaries, or those who are homeschooled. LEAs also must calculate and spend a proportionate share of federal special education (Individuals with Disabilities Education Act or IDEA) grant funds to provide equitable special education services for these students.

Parentally placed private school students include students at secular, non-secular, and independent schools, and homeschooled students. **Please review the Department’s guidance on proportionate share requirements,** [**Special Education Administrative Advisory SPED 2018-1**](http://www.doe.mass.edu/sped/advisories/2018-1.pdf#page=1) (2018-1 Advisory) **and dedicated proportionate share** [**website**](http://www.doe.mass.edu/sped/proshare/) **for more detailed information.**

## LEA Requirements with Suggested Actions for private school representatives, parents of parentally placed private school students, or parents of home school students

| **LEA Requirements** | | **Suggested Actions for Private Schools** |
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| Each LEA must comply with the following requirements on an annual basis: | |  |
| **1.** | **Timely and Meaningful Consultation.**  Prior to other required activities, LEAs must invite and consult with private school and home school representatives, and representatives of parents of eligible privately enrolled students educated in the district. Topics that must be discussed are: child find process, determination of proportionate share, consultation process, provision of special education and related services, and provision of a written explanation by the LEA regarding services (in the event of disagreement between the LEA and private school officials). Although the initial consultation must occur prior to other required activities, additional consultation may occur subsequently and be an ongoing process.  If the LEA disagrees with the views of the private school officials on the provision of services or the types of services, the LEA will give the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.  The LEA has the final decision-making authority on services provided. | Corresponding suggested actions:   * Contact your [Directory Administrator](http://www.doe.mass.edu/infoservices/data/diradmin/list.aspx) to update contact information on the [DESE Profiles website](http://profiles.doe.mass.edu/). * Designate a person from each private school to serve as a point of contact and liaise with the LEA. * Attend and be an active participant at consultation meetings.   Consultation is:   * An opportunity for all parties to express their views and consider others’ views. * A collaborative decision-making and communication process. * General discussions of the topics listed to the left. Consultation meetings are not to discuss individual students’ needs. Individual students’ needs are discussed in Services Plan meetings.   DESE recommends at least three consultation meetings annually – beginning, middle and end of year. |



| **LEA Requirements** | | **Suggested Actions for Private Schools** | |
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| Each LEA must comply with the following requirements on an annual basis: | |  | |
| **2.** | **Written Affirmation Following Consultation.** The LEA must obtain written affirmation confirming that timely and meaningful consultation has occurred signed by the attendees: private school representatives, representatives of parents of private school students, and parents of home school students. A sample written affirmation can be found [here](http://www.doe.mass.edu/sped/advisories/2018-1.pdf#page=1) (2018-1 Advisory at Attachment C).  The written affirmation is confirmation that consultation has occurred—not that there is agreement among meeting participants. Each time meaningful consultation occurs, the LEA must obtains written affirmation of the consultation from meeting participants.  If participants do not sign, the LEA must forward documentation the consultation to DESE at: [IDEAequitableservices@doe.mass.edu](mailto:IDEAequitableservices@doe.mass.edu). | Corresponding suggested action:   * Sign the written affirmation at every consultation meeting attended by your school. If not at the end of the meeting, as soon as possible thereafter.   Written Affirmation does not indicate "agreement" but rather is a statement that the meeting occurred and there was discussion of the required elements.  Signing the written affirmation does not obligate any participant to take specific action or subject the private school to federal oversight. | |
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| **3.** | **Child Find.** Child find activities for privately-enrolled students by the LEA must be comparable to those conducted for public school students. Child find for privately-enrolled students is the process for identifying all eligible students who attend school in the district. The LEA must provide private schools and families of privately-enrolled students with information describing how students with disabilities who are eligible for special education can access publicly-funded evaluations and special education services.  For preschool-aged students (3-5), only those who attend a private preschool program meeting the definition of an elementary school under the law may be included. Because stand-alone private preschools or private childcare centers do not provide “elementary education” consistent with the federal definition of elementary schools, otherwise-eligible preschool-aged children attending those programs are not included in the LEA’s proportionate share child count or are eligible to receive services.  Child Find is ongoing throughout the year. | Corresponding suggested actions:   * Post Child Find Notices in visible areas of your school. * Help LEA identify eligible children with disabilities who must be considered in the group of eligible students for whom the LEA can provide services. * Share letters and notices from the LEA with the parents of students in your school.   Similar to the activities for public school children.  Will include explicit outreach to private schools, parents, and parents of students who are home schooled in the district.  Helps private schools and parents start the referral process if there is a suspected disability to be assessed to determine eligibility.  Ensures LEAs have all information they need to identify what students are eligible for special education.  Applies to resident students and non-residents attending private school in the district, regardless of where the students live. |

| **LEA Requirements** | | | **Suggested Actions for Private Schools** | |
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| Each LEA must comply with the following requirements on an annual basis: | | |  | |
| **4.** | **Evaluation and Determination of Eligibility.** An LEA must evaluate and determine whether parentally placed private school students educated within the LEA’s boundaries are eligible for special education services. LEAs may conduct their own evaluation or may accept a prior evaluation documentation if the information is comprehensive and current.  **District of Location and District of Residence have distinct obligations to determine eligibility for special education services under separate laws.**   * **District of Location** **- Federal (IDEA):** LEAs evaluate, and determine eligibility for parentally placed private school student attending private school in the district at private expense, regardless of where the students live. If eligible, the student joins a pool of students who may or may not receive services, as determined by the LEA after consultation. (group entitlement) * **District of Residence - State:** LEAs evaluate, determine eligibility, and, if eligible, offer students a free, appropriate public education (FAPE) through writing IEPs for parentally placed private school and homeschool students who reside in the district or are their resident students regardless of where they attend school. (individual entitlement) | | Corresponding suggested actions:   * Help educate parents that all students have a District of Location (where they attend school) and District of Residence (where they live) * Explain the different options for evaluation from District of Location or District of Residence, including the different outcomes of each. * Liaise with LEA as needed to facilitate evaluation and eligibility determination. | |
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| **5.** | **Child Count and Proportionate Share Calculation.** As described on [the DESE website](http://www.doe.mass.edu/sped/advisories/2018-1.pdf#page=1%20(2018-1%20Advisory%20at%2011-12)), LEAs must determine the number of eligible students who are parentally placed private school students and educated within the district. The child count is the number of *eligible* students, not the number of such students who have or are receiving services. Child count must be performed on any date between October 1 and December 1, inclusive, of each year.  This number is then used to calculate how much the LEA must spend from its special education grant on services for eligible parentally placed private school students and students who are homeschooled in the subsequent fiscal year.  Child count determines the number of students to include for the proportionate share calculation submitted with the subsequent year IDEA grant applications.  LEAs can impose deadlines for when they must receive supporting documentation from private school representatives and parents for the purposes of child count. | | Corresponding suggested actions:   * Private schools should come prepared to the consultation meeting with supporting documentation that confirms enrollment and eligibility. * Upon LEA’s request, provide information to LEA in a timely fashion regarding number of students eligible and also provide supporting documentation confirming enrollment and eligibility. Adhere to LEAs can impose deadlines for when they must receive supporting documentation.   A child with a 504 Plan or a special education plan created by a private school is not considered eligible for special education under IDEA. That child must be evaluated by the public school LEA to determine their eligibility.  A list of student names or a total number of students alone is not sufficient documentation of child count of eligible students. |
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| **LEA Requirements** | | | **Suggested Actions for Private Schools** |
| Each LEA must comply with the following requirements on an annual basis: | | |  |
| **6.** | | **Proportionate Share Expenditure**. LEAs determine which services to provide following consultation with representatives of the private schools located in the district and parent representatives of eligible private school and/or home-schooled students. State and local funds may be used to *supplement but not supplant* the required expenditure of federal funds. Examples of allowable and unallowable expenditures can be found [here](http://www.doe.mass.edu/sped/advisories/2018-1.pdf#page=1) (2018-1 Advisory at 11-12).  Each LEA must spend its calculated IDEA proportionate share amount each year from the IDEA entitlement funds.  LEAs must document expenditures and other activities related to IDEA and proportionate share.  The LEA must determine the services, pay for them, and monitor vendors/providers as they would any service provider.  LEAs can adjust services throughout the year. Decision-making is a collaborative process. | Corresponding suggested actions:   * Emphasize communication and collaboration with LEA while determining the use of funds. * Help make the decisions about fund use. * Return any non-disposable items purchased with IDEA funds to the LEA as they belong to the public school district, not the private school.   The amount of available funds may change from year to year, depending on, among other things, whether there is carry-over from the previous year.  The Federal Government nor DESE prescribe how LEAs spend the proportionate share funds.  Federal funds can be used to provide services on the grounds of the private school; state and local funds cannot.  IDEA funds are not given to the private school to use at its discretion.  Because private schools are not at any time receiving federal funds from the public school district, they are not subject to federal oversight. |
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| **7.** | | **Development of Services Plans.** LEAs are responsible for ensuring that each parentally placed private school student with a disability who has been designated to receive proportionate share services under either the 240 or 262 grant has a services plan describing the specific special education services that the LEA will provide, including where and when the LEA will provide services to the student. A sample services plan can be found [here](http://www.doe.mass.edu/sped/advisories/2018-1.pdf#page=1) (2018-1 Advisory at Attachment E).  Annually, any parentally placed private school child with a disability who has been designated to receive proportionate share services must have a separate services plan written by the public school District of Location.  Services Plans are a separate and distinct document from an IEP, but are developed, reviewed, and revised by the District of Location similarly to IEP process. | Corresponding suggested actions:   * Coordinate with the LEA for the Service Plan meetings. * Ensure parents are notified of the service plan meeting for their child. * Ensure parents are participants at the meeting at which their child's service plan will be developed. * Representatives from the private school are required to attend as well.   The District of Residence is not a required participant for a Services Plan meeting. |

| **LEA Requirements** | | **Suggested Actions for Private Schools** |
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| Each LEA must comply with the following requirements on an annual basis: | |  |
| **8.** | **Providing or Contracting for Services.** In expending federal IDEA Part B funds, LEAs may provide services at the private school, at a public or neutral site convenient to the private school, on public school grounds, or contract for the provision of services at an appropriate site, ensuring that they provide transportation to the student.  Federal funds can be used to provide services on the grounds of the private school; state and local funds cannot. | Corresponding suggested actions:   * LEAs can contract with and pay for the services of an employee of a private school to provide services to parentally placed students outside of his or her regular hours of duty and only if under public supervision and control. * Private schools cannot receive IDEA funds from the LEA to use at its discretion. * Private schools cannot be reimbursed for services rendered through their own contractors. |

## FAQs

1. ***Can the district give the proportionate share funds to the private school to provide equitable services?***No. The control of funds used to provide special education services and the control of materials, equipment, and property purchased with those funds is the sole responsibility of the public school district. With regard to personnel, [34 C.F.R. § 300.142](https://www.ecfr.gov/cgi-bin/text-idx?SID=f8a3e1dcfedbaa7e7b4b6115f1012436&mc=true&node=se34.2.300_1142&rgn=div8) states that the district “may use funds available under [special education grants] to pay for the services of an employee of a private school to provide services…if the employee performs the services outside of his or her regular hours of duty, and the employee performs the services under public supervision and control.”
2. ***Can families receive some of their services at their private school when funded by proportionate share and the rest of their services at the local public school?*** Yes, the district can provide services using federal funds to students at the location of the private school, in another location, or at the public school. The terms of service and their location are determined after consultation.
3. ***What happens if the district does not use all of the proportionate share of 240 or 262 funds by the end of the fiscal year for which Congress appropriated the funds?*** If a district has not expended its proportionate share minimum obligation of federal funds for either grant by the end of the fiscal year, the district must obligate and carry over the remaining funds for special education and related services for privately-enrolled students for one year.
4. ***What if the district cannot spend the proportionate share funds after the one-year carry-over expires?*** Districts should make every effort to spend the proportionate share funds each year, including any carry-over from the prior year. If, after the carry-over period, the district is unable to expend the entire proportionate share of funds due to exceptional circumstances, and assuming the district has complied with all requirements in [34 C.F.R. §§ 300.129](https://www.ecfr.gov/cgi-bin/text-idx?SID=f8a3e1dcfedbaa7e7b4b6115f1012436&mc=true&node=se34.2.300_1129&rgn=div8)-[300.144](https://www.ecfr.gov/cgi-bin/text-idx?SID=f8a3e1dcfedbaa7e7b4b6115f1012436&mc=true&node=se34.2.300_1144&rgn=div8), the district may use the unexpended funds—at the end of the period during which the funds may be spent on parentally-placed private school children—to pay for other allowable Part B expenditures. *See* [2011 U.S. Dept. of Educ. Q&A](https://sites.ed.gov/idea/files/Private_School_QA_April_2011.pdf) at Question H-5. The district should document and retain records of all efforts made, even if unsuccessful, to spend the proportionate share funds.

***DESE Proportionate Share Resources***

* [2018-1 Advisory](http://www.doe.mass.edu/sped/advisories/2018-1.pdf#page=1)
* [Additional Resources](http://www.doe.mass.edu/sped/proshare/):
* Questions and Answers On Serving Children With Disabilities Placed by Their Parents at Private Schools
* Provisions Related to Children With Disabilities Enrolled by Their Parents in Private Schools
* Sample Child Find Notices
* Sample Letters
* FY19 240 Proportionate Share Calculation Directions
* FY19 240 Proportionate Share Calculation Form
* FY19 262 Proportionate Share Calculation Directions
* FY19 262 Proportionate Share Calculation Form

For additional FAQs, please review the [**2018-1 Advisory**](http://www.doe.mass.edu/sped/advisories/2018-1.pdf#page=1)**.**