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## **Administrative Advisory SPED 2018-1: Guidance and Workbook for Calculating and Providing Proportionate Share Services for Students with Disabilities Enrolled by Their Parents in Private Schools**

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July 2017 – **REVISED July 2018 to include reference to Grant Fund Code 262 which DESE will administer starting in FY19**



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## Introduction

The Department of Elementary and Secondary Education (DESE) provides this consolidated Advisory to guide Massachusetts public school districts in meeting their federal obligations regarding students with disabilities enrolled by their parents in private schools, including secular, non-secular, and independent schools, or home schooled within the district.<sup>1</sup> Districts have an obligation to locate and evaluate such students and to calculate and spend a proportionate share of federal special education (Individuals with Disabilities Education Act or IDEA) grant funds on equitable services for these students. Please note that this advisory consolidates and replaces previously issued guidance, *Administrative Advisory SPED 2007-2: IDEA and Private School Students (updated July 2008)* and *Technical Assistance Advisory SPED 2017-2: Calculating and Providing Proportionate Share Services*. Both of these advisories are now withdrawn. This guidance is not intended to be a replacement for careful study of the IDEA and its implementing regulations or of controlling case law. Additional information regarding federal requirements can be found on the website of the U.S. Department of Education, Office of Special Education Programs (OSEP). <http://idea.ed.gov>.

This Advisory will discuss proportionate share matters under the IDEA entitlement grants awarded to Massachusetts districts under DESE Fund Codes 240 (students age 3-21) and 262 (students age 3-5).<sup>2</sup> This includes district requirements of consultation with representatives of private schools, child find, evaluation and determination of eligibility, child count, calculating proportionate share, allowable and non-allowable expenditures, development of services plans, and provision or contracting for services for privately enrolled students. The Advisory also details federal and state requirements to provide special education services to parentally-placed private school students and offers information on reconciling the differences between the two. Attached to this Advisory are a *Proportionate Share Timeline*, *Suggested Roles for Proportionate Share Activities*, *Sample Written Affirmation*, *Summary of District*, *Sample “Services Plan” Form*, and *Frequently Asked Questions*. Additional information can be found at the DESE website [Proportionate Share Services for Students with Disabilities Enrolled by Their Parents in Private Schools](#).

## Purpose

DESE’s intent is to simplify the instructions, delineate responsibilities, and offer clear, concise best practice guidance for proportionate share activities for Massachusetts school districts. This information is for special education administrators, school business managers, and other interested parties regarding required activities such as consultation, child find, evaluation, proportionate share calculation, and expenditures. Such activities are required to demonstrate compliance with the federal requirements of the IDEA regarding proportionate share services for eligible privately enrolled students who are educated within the geographic boundaries of the school district, including home schooled students.

## Proportionate Share Overview

Proportionate share is a portion of a district’s IDEA Part B entitlement grants (DESE fund codes 240 and 262) allocated to eligible parentally-placed students who are privately educated in the district’s geographic boundaries regardless of where the students live. Parentally-placed private school students with

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<sup>1</sup> Federal Provisions Related to Children With Disabilities Enrolled by Their Parents in Private Schools 34 CFR §§300.130-300.144.

<sup>2</sup> Starting in FY19, administration of Fund Code 262, the Early Childhood Part B IDEA entitlement grant, will be the responsibility of DESE rather than the Department of Early Education and Care (EEC).

disabilities refers to children with disabilities enrolled by their parents in private, including religious and independent,<sup>3</sup> schools or facilities that meet the definition of an elementary school or secondary school.<sup>4</sup> **It is important to note, in Massachusetts, privately enrolled students include students who are educated at home under a plan reviewed and approved by the district.**

### **District Requirements**

Annually, all districts with private schools or home schooled students within their geographic boundaries must calculate proportionate share, demonstrate upon request that they have spent this amount of IDEA grant funds on eligible students who are privately enrolled and educated in the district, and submit the [Proportionate Share Forms](#) for both the 240 and 262 grants to DESE. Districts are required to conduct a variety of activities related to provision of proportionate share special education services for students who are privately enrolled by their parents. These activities, discussed in depth below, include consultation, child find, evaluation and determination of eligibility, determination of the proportionate share amount, expenditure of the proportionate share, development of services plans, and provision of services either directly or through contracts. DESE has developed a Proportionate Share Timeline, included below, that districts may use to plan the required activities (**Attachment A: Proportionate Share Timeline**).

### **Consultation with Representatives of Private Schools**

IDEA requires that public school districts ensure that leaders of private schools and representatives of parents of parentally-placed private school children with disabilities and representatives of home school students have opportunities to engage in "timely and meaningful" consultation about the opportunity to access special education.<sup>5</sup> Effective consultation should occur prior to other required activities and provide an opportunity for all parties to express their views and to have those views considered by the district as part of the decision-making process.<sup>6</sup> Timely and effective consultation requires districts to invite and consult with representatives of the private schools and representatives of parents of privately enrolled and home schooled students who are educated within the geographic boundaries of the district. (**Attachment B: Suggested Roles for Proportionate Share Activities**)

The consultation must occur prior to providing proportionate share services and must allow input from these representatives on the types of services to be provided and the delivery of services. In this consultation, the district must discuss all of the areas that follow.

- Child find:
  - the child find process for privately-enrolled students and how parents, teachers, and private school officials are to be informed about this process;
  - how parentally-placed private school children suspected of having a disability can be evaluated for eligibility and be offered equitable participation in special education services;
- Determination of Proportionate Share:

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<sup>3</sup> This term does not include students placed by their parents in private special education schools who are seeking public tuition for such programs. This advisory does not address the specific requirements that apply in the latter circumstance.

<sup>4</sup> 34 CFR § 300.130.

<sup>5</sup> 34 CFR § 300.134.

<sup>6</sup> Q and A: Questions and Answers On Serving Children With Disabilities Placed by Their Parents at Private Schools, OSERS, April 2011 (revised), Answer to Question A-1.

- the amount of funds available under the proportionate share requirements and how proportionate share was determined using the DESE forms for both the 240 and 262 grants;
- The consultation process, methodology, and schedule for the year:
  - the process the school district will use in providing private schools and parents with opportunities for input throughout the school year;
- Determination of services and their method(s) of provision:
  - a discussion of student needs and possible types of special education and related services that can be provided either directly or through alternative service delivery mechanisms;
  - consideration that federal grant funds can be used to provide services on the grounds of private schools, although services provided with state and local funds must be provided at a “public school facility or other public or neutral site;”<sup>7</sup>
  - If the amount of proportionate share grant funds are insufficient to serve every student, a discussion of how the district will apportion the services among eligible students, or may choose to supplement the proportionate share of the grant funds with additional grant funds or with state or local funds.

### Written Affirmation following consultation<sup>8</sup>

- **When the timely and meaningful consultation has occurred, the school district must obtain written affirmation to that effect signed by the private school representatives and home school students’ parent representatives. (Attachment C: Sample Written Affirmation)** While the law does not require the signature of the representative parents, we recommend that districts obtain the signature of all participants in the consultation. These signatures must be kept on-site at the school district.
- If the representatives of the private schools, including home school parents, do not provide written affirmation within a reasonable amount of time, the district must forward documentation of the consultation process to the IDEA Ombudsperson at DESE at: [IDEAequitableervices@doe.mass.edu](mailto:IDEAequitableervices@doe.mass.edu).

### Child Find

School districts must conduct child find activities for all students living or attending school in the district (ages 3-21), regardless of whether students attend public or private schools or are home schooled. Only preschool aged students (ages 3-5) who attend a public or private preschool program that meets the definition of an elementary school under the law (see page 7 for definition) may be included in child find activities for IDEA Part B grants (the 240 and 262 grants).

Child find activities for privately enrolled students must be comparable to those conducted for students in public schools and must include all students who are privately educated, including those who are home schooled, in the district. The district also must provide all private schools and students who are privately enrolled with

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<sup>7</sup> 603 CMR 28.03(1)(e)(3).

<sup>8</sup> 34 CFR § 300.135.

information about how students can access publicly funded evaluations and special education services.<sup>9</sup>

#### **(Attachment D: Summary of District Obligations)**

If a student lives in one Massachusetts district but attends a private school in another district, the district in which the private school is located should contact the district in which the student lives<sup>10</sup> to determine whether a determination has already been made regarding eligibility. Both school districts have an obligation to determine eligibility under separate laws. State law puts the obligation on the district of residence,<sup>11</sup> and federal law requires the district where the private school is located do so.<sup>12</sup> The district that conducts the evaluation should provide the results of the evaluation to the other district. District responsibility is determined according to the respective federal and state requirements.

#### **Evaluation and Determination of Eligibility**

IDEA requires school districts to evaluate and to determine whether students are eligible for special education services if they are privately enrolled and receiving their education within the district’s boundaries. **The Massachusetts school district where the private school is located may conduct its own evaluation in a manner consistent with the requirements of state and federal law<sup>13</sup> or may accept a prior evaluation if the evaluation information is comprehensive and current.**<sup>14</sup> Eligibility for all students attending school in Massachusetts is determined using criteria based on the definitions of disability.<sup>15</sup>

#### **Child Count and the Calculation of Proportionate Share**

After completion of timely and meaningful consultation, child find activities, and eligibility determinations, districts conduct the child count to be used in calculating proportionate share. **Districts must determine the child count of students ages 3-21 for the 240 grant, and the child count of students ages 3-5 for the 262 grant, on any date between October 1 and December 1, inclusive, of each year.**<sup>16</sup> The child counts are used to determine the amount that the district must spend under each grant to provide special education and related services to parentally-placed private school children with disabilities *in the subsequent fiscal year*.<sup>17</sup> The child count is the number of *eligible* students who are privately enrolled or home schooled and educated within the district, not the number of such students receiving services.<sup>18</sup> Preschool aged children are considered to be parentally-placed private school students *if they are enrolled in a private school that meets the definition of an elementary school*.<sup>19</sup>

Federal regulations, at 34 CFR 300.13, define an elementary school to be “a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.”

<sup>9</sup> 34 CFR § 300.131.

<sup>10</sup> Also referred to as “district of residence.”

<sup>11</sup> M.G.L. c. 71B, § 3; St. 1999, c. 127, § 258; 603 CMR 28.03(1)(e).

<sup>12</sup> 34 CFR § 300.131.

<sup>13</sup> See 603 CMR 28.04 and 20 U.S.C. § 1414.

<sup>14</sup> Q and A: Questions and Answers On Serving Children With Disabilities Placed by Their Parents at Private Schools, OSERS, April 2011 (revised), Answer to Question B-4.

<sup>15</sup> See 603 CMR 28.02(2).

<sup>16</sup> Because districts must calculate and spend a proportionate share of funds under each Part B IDEA entitlement grant, they must conduct a separate calculation for the 262 grant, even though 3 to 5 year olds are also included in the child count for the 240 grant. See FAQ no. 12 on page 25, for further explanation

<sup>17</sup> 34 CFR § 300.133(c)(2).

<sup>18</sup> Q and A: Questions and Answers On Serving Children With Disabilities Placed by Their Parents at Private Schools, OSERS, April 2011 (revised), Answer to Question H-2.

<sup>19</sup> 34 CFR § 300.133(a)(2)(ii).

Because stand-alone private preschools or private childcare centers do not provide “elementary education,” eligible preschool aged children attending those programs are not included in the district’s proportionate share child count.

**It is important to note that in calculating proportionate share, students who attend private schools located in a district other than the one in which they live are not included when the district of residence calculates or decides how to spend the proportionate share of IDEA grant funds.** Students who live in one Massachusetts district and attend private school in another district must be counted for proportionate share child count activities **by the district in which they attend private school**, even though they may receive services through an IEP from the district in which they live, consistent with state law. This is true even though the district of residence may develop the IEPs of eligible students, provide special education and related services, and report these privately enrolled students to DESE through Student Information Management System (SIMS). Even if a parent refuses the services provided under a services plan or a student is receiving services from their district of residence, **the district where the private school is located must include this child in the count of eligible private school children with disabilities in that district in determining proportionate share.**<sup>20</sup>

To assist districts with calculation and documentation of proportionate share for both the 240 and 262 grants, the DESE has created Proportionate Share Calculation Forms available at <http://www.doe.mass.edu/sped/proshare>. The calculation methodology is the same for both grant codes. To calculate proportionate share, the district must know:

1. the amount of each Part B entitlement grant (Fund Code 240 and 262) allocated to the district for the fiscal year;
2. For each grant, the number of **eligible** public school students who live in and attend school/are enrolled in the district;
3. For each grant, the number of **eligible** parentally-placed students **attending private school in the district** in an elementary or secondary school. This includes:
  - a. students who live in the district and attend a private school in the district;
  - b. students who live outside the district but attend a private school in the district;
  - c. students who live in the district and are home schooled in the district; and
  - d. out-of-state students who attend a private school located in the district.

#### **EXAMPLE – 240 Grant**

*There are five (5) eligible private school students enrolled in private schools or home schooled within the geographic boundaries of Anytown District; two (2) are district residents, one (1) lives in another Massachusetts town, one (1) lives in another state, and one (1) is home schooled. The district also serves 495 eligible students who reside and are enrolled in the district.*

*Anytown District also serves five (5) students who are enrolled in private schools located in other districts, as required by Massachusetts law. These students are, however, **not** included in Anytown District's proportionate share calculation. Rather, these students must be included in*

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<sup>20</sup> U.S. Department of Education, Office of Innovation and Improvement, Office of Non-Public Education, The Individuals with Disabilities Act (IDEA): Provisions Related to Children With Disabilities Enrolled by Their Parents in Private Schools, Washington D.C., 2008, 8, <https://www2.ed.gov/admins/lead/speced/privateschools/idea.pdf>.

*the proportionate share calculation for the districts in which the private schools they attend are located.*

*The total number of eligible students both privately enrolled and enrolled in public schools in Anytown District is 500. This includes the five privately enrolled or home schooled students referred to above and 495 eligible students enrolled in the district. The district's proportion of eligible parentally-placed private school students to all eligible students is 5:500 or 1%.*

*Anytown District received \$200,000 as its Fund Code 240 grant. Because the proportion of private school students with disabilities is 1% of all students with disabilities, the "proportionate share" of the 240 funds is 1% of the total grant of \$200,000, or \$2,000. Anytown District must spend at least \$2,000 of its 240 grant on services<sup>21</sup> for the five parentally-placed private school students and home schooled students educated in the district to meet its proportionate share obligation under Fund Code 240.*

### **EXAMPLE – 262 Grant**

*Of the five (5) eligible private school students enrolled in private schools or home schooled within the geographic boundaries of Anytown District, one of them is a preschool-aged child (3-5 years old) who attends a private preschool program that is part of a private elementary school in the district. The district serves 9 eligible preschool students who reside and are enrolled in the public school district.*

*The total number of eligible preschool students privately enrolled and enrolled in public schools in Anytown District is 10. This includes the one privately enrolled preschool child referred to above and 9 eligible preschool students enrolled in the district. The district's proportion of eligible parentally-placed private preschool students to all eligible preschool students is 1:10 or 10%.*

*Anytown District received \$2,500 as its Fund Code 262 grant. Because the proportion of private preschool students with disabilities is 10% of all preschool students with disabilities, the "proportionate share" of the 262 grant is 10% of the total grant of \$2,500, or \$250.*

*Anytown District must spend at least \$250 of its 262 grant on services for the one parentally-placed private preschool student educated in the district to meet its proportionate share obligation under Fund Code 262.*

Finally, once timely and meaningful consultation has occurred, the proportionate share is calculated, and the district has determined the services that it will provide under each grant, the district documents how it will spend the proportionate share funds for each grant in the next subsequent fiscal year. DESE collects this information annually in the Proportionate Share Calculation Forms.

### **Written Explanation by School District Regarding Service Decisions**

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<sup>21</sup> The school district cannot include the costs of conducting child find activities and of evaluating students in determining whether the district has met its proportionate share obligations under federal law. 34 CFR § 300.131(d).

If the school district disagrees with the views of the private school officials on the provision or type of services under either grant, the district must provide private school officials with a written explanation of the reasons the district chose not to provide services directly or through a contract. The school district, however, has the final decision-making authority.

### **Expenditure of Proportionate Share**

Under federal law, school districts determine which services to provide with the proportionate share of federal funds under each grant following consultation with representatives of the private schools located in the district and parent representatives of eligible private school and home schooled students. There are many ways in which the district may decide to spend proportionate share funds following consultation. For example, depending on the proportionate share amount, students' needs, and other considerations discussed during consultation, the district may expend the entire federal proportionate share on only one eligible student or may decide to allocate an amount for services for more than one or for all of the students. Regardless of what a district may spend on IEP services for privately enrolled students who live in the district, any districts with a private school located in its geographic boundaries that eligible students attend must calculate proportionate share under each grant and must demonstrate how the district will spend 240 and 262 grant funds in that proportionate amount on special education services for these students.

The federal regulations regarding expenditure of proportionate share funds make clear that state and local funds may be used to **supplement but not supplant** the required expenditure of federal funds.<sup>22</sup> If a district has not expended their 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.<sup>23</sup> Using federal funds, districts may provide services for students who are privately enrolled on the premises of the private schools.<sup>24</sup> Districts also may provide transportation.<sup>25</sup> As a reminder, state and local funds may be used to provide services at the public school or another public or neutral site.

### **Carry-over Year**

If a district has not met the minimum level of required proportionate share expenditure for the fiscal year under either grant, they must carry over the additional amount not spent to the next fiscal year's proportionate share obligation for that grant. After the carry-over period, if a district is unable to expend the entire proportionate share, and assuming the district is in compliance with the child find, consultation, and other requirements related to parentally-placed private school children with disabilities, they 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 IDEA district expenditures for eligible students served under the grant.<sup>26</sup> This situation should be the exception, and reasons for it should be clearly documented by the district.

### **EXAMPLE – 240 Grant:**

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<sup>22</sup> 34 CFR § 300.133(d).

<sup>23</sup> 34 CFR § CFR 300.133(a)(3).

<sup>24</sup> 34 CFR § 300.139(a).

<sup>25</sup> 34 CFR § 300.139(b).

<sup>26</sup> Allowable and unallowable expenditures are the same under the 240 and 262 grant codes.

*Anytown District calculates a proportionate share amount of \$1,400 of its 240 grant that it needs to spend in FY19 for purposes of proportionate share on services for eligible private school students attending a private school or home schooled in the district’s boundaries. There is only one eligible private school student, age 4, and his parents decline services. The public school district offers to spend proportionate share funds on indirect services such as professional development for private school personnel working with the student. The private school also declines this offer. Therefore, Anytown District cannot spend its proportionate share of its 240 grant for FY19. For FY20, Anytown District must add the \$1,400 of carry-over funds to the 240 proportionate share amount for FY20. The district will report these carry-over funds on the budget tab of the proportionate share form that it submits with the grant application for Fund Code 240.*

**EXAMPLE – 262 Grant:**

*Anytown District calculates a proportionate share amount of \$250 of its 262 grant that it needs to spend in FY19 for purposes of proportionate share on services for eligible private preschool students (ages 3-5) attending a private preschool program that meets the definition of an elementary school or home schooled in the district’s boundaries. There is only one eligible private school student, age 4, and his parents decline services. The public school district offers to spend proportionate share funds on indirect services such as professional development for private school personnel working with the student. The private school also declines this offer. Therefore, Anytown District cannot spend its proportionate share of its 262 grant for FY19. For FY20, Anytown District must add the \$250 of carry-over funds to the 262 proportionate share amount for FY20. The district will report these carry-over funds on the budget tab of the proportionate share form that it submits with the grant application for Fund Code 262.*

**Allowable Expenditures of Proportionate Share (Applicable to both the 240 and 262 grants)**

Allowable Expenditures	Unallowable Expenditures
<ul style="list-style-type: none"> <li>• Benefit only eligible students who are privately enrolled</li> <li>• Direct services (<i>preferred</i>)</li> <li>• Use of Personnel:<sup>27</sup> <ul style="list-style-type: none"> <li>○ Can make public school personnel available in facilities other than public facilities<sup>28</sup>; or</li> <li>○ Can pay for the services of an employee of a private school to</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Administrative costs of child find and evaluation</li> <li>• Child find</li> <li>• Evaluation</li> <li>• Separate classes<sup>31</sup></li> <li>• Repairs of private school facilities</li> <li>• Minor remodeling of private school facilities</li> <li>• Construction of private school facilities.<sup>32</sup></li> </ul>

<sup>27</sup> 34 CFR § 300.142.

<sup>28</sup> Q and A: Questions and Answers On Serving Children With Disabilities Placed by Their Parents at Private Schools, OSERS, April 2011 (revised), Answer to Question C-2.

<sup>31</sup> 34 CFR § 300.143.

<sup>32</sup> 34 CFR § 300.144(e).

Allowable Expenditures	Unallowable Expenditures
<p style="text-align: center;">provide services outside of his or her regular hours of duty and <b>only</b> if under public supervision and control</p> <ul style="list-style-type: none"> <li>• Indirect services, which can include, but are not be limited to: <ul style="list-style-type: none"> <li>○ consultative services</li> <li>○ equipment and materials<sup>29</sup></li> <li>○ training for private school teachers and other private school personnel.</li> </ul> </li> <li>• Transportation<sup>30</sup></li> </ul>	

**Equipment and Materials:** The district must control and administer federal funds used to provide special education and related services. The district must oversee all materials, equipment, and property purchased with those funds including, but not limited to, ownership of and rights to such materials, equipment, and property. Equipment and supplies may be placed in a private school for a period of time **only** to service eligible individual students and only if the equipment and supplies can be removed without remodeling the private school facility. The district must remove such equipment and supplies when no longer serving those students or if the equipment and supplies are being used in an unauthorized manner. Districts may not use funds for any repairs, minor remodeling, or construction of private school facilities.<sup>33</sup>

**Requirement:** Proportionate share funds are intended only to benefit eligible students who are parentally-placed in private schools or home schooled. Funds must not “finance the existing level of instruction in a private school or . . . otherwise benefit the private school.”<sup>34</sup> Public funds, including federal funds, may be used to meet the needs of the parentally-placed private school children and may not be used to benefit the private school as a whole or the general needs of students enrolled in the private school.

### Development of Services Plans

Every parentally-placed private school child with a disability who has been designated to receive proportionate share services under either the 240 or 262 grant must have a services plan that describes the specific special education services that the district will provide, including where the district will provide services to the student.<sup>35</sup> A sample services plan is included as attachment (**Attachment E: Sample “Services Plan” Form**). A services plan is not the same as an IEP that eligible students are entitled to receive from the district in which they live. Districts, however, to the extent appropriate, must develop, review, and revise services plans consistent with the IEP process. This includes, but is not limited to, inviting private school representatives and

<sup>29</sup> 34 CFR § 300.144.

<sup>30</sup> 34 CFR § 300.139.

<sup>33</sup> 34 CFR § 300.144(e).

<sup>34</sup> 34 CFR § 300.141.

<sup>35</sup> 34 CFR § 300.138.

parents to meetings to develop services plans.<sup>36</sup> The parents of the child are required participants in the meeting to develop the services plan for their child.<sup>37</sup>

Proportionate share services plans do not confer an individual entitlement to special education and related services. Additionally, IDEA does not require that a parent provide written consent to a services plan. A parent, however, may refuse services proposed in a services plan.

### **Providing or Contracting for Services**

Districts may use federal funds to facilitate a private school student's access to proportionate share services in a number of ways. Districts may provide services on site at the private school, provide services at a public or neutral site convenient to the private school, provide services on public school grounds, and contract for the provision of services at an appropriate site, ensuring that they provide transportation to the students. Many private schools would welcome the opportunity to facilitate students' access to services on the grounds of the private schools and would work cooperatively with districts to do so.

### **State and Federal Requirements to Provide Special Education Services to Parentally Placed Students Who are Privately Educated**

Requirements in IDEA for providing special education services to eligible private school students differ from those under state law. As described more fully below, state law requires districts to evaluate and develop IEPs for all eligible students who live in the district. In contrast, federal law requires districts to spend a "proportionate share" of their Part B federal IDEA grants – known as Fund Codes 240 and 262 in Massachusetts – on services for eligible students who are privately enrolled and educated within the geographic boundaries of the district using a "services plan."

### **State Law Applies to Eligible Students who Reside in Massachusetts**

**State** law regarding special education applies to all Massachusetts residents, regardless of where they attend school. It requires school districts to offer special education and related services to all eligible students who reside in the district,<sup>38</sup> including students who are privately enrolled, regardless of where the student attends school.<sup>39</sup> In Massachusetts, privately enrolled students are those students who attend private schools, including non-secular schools and approved special education schools at private expense,<sup>40</sup> and students who are home schooled. Special education and related services must be designed to meet the needs of eligible students and must provide these students with a genuine opportunity to participate in the public school special education program. Students have an individual entitlement to receive these services. The school district must provide or arrange for evaluation, convene a team to determine eligibility and create an IEP, and make services available to all eligible students who reside in the district, regardless of where they attend school.

Under state law, services described in an IEP that are funded with state or local funds must be provided in a public school facility or in another public or neutral site.<sup>41</sup> Schools may provide services at the private school if

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<sup>36</sup> 34 CFR §§300.321 through 300.324 and 34 CFR §300.138(b)(2)(ii).

<sup>37</sup> Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, Office of Special Education and Rehabilitative Services (OSERS), April 2011, Answer to Question E-2.

<sup>38</sup> M.G.L. c. 71B, § 3.

<sup>39</sup> St. 1999, c. 127, Section 258; 603 CMR 28.03(1)(e).

<sup>40</sup> This does not include students who attend approved special education schools at public expense.

<sup>41</sup> 603 CMR 28.03(1)(e)(3).

only federal funds are used; state and local funds cannot be used for services at private schools. State law requires that special education and related services for eligible privately enrolled students must be comparable in quality, scope, and opportunity for participation to those provided to public school students with disabilities,<sup>42</sup> and must be described in an IEP. Eligible privately enrolled students served by the districts in which they live have individual educational and due process rights, as defined in IDEA.

Students attending private school may also receive services under Federal law from the district where the private school is located as described below.

### **Federal Law Applies to Privately Enrolled Eligible Private School Students According to the Location of the School They Attend**

**Federal** special education law, IDEA, also requires school districts to provide special education services to eligible privately enrolled students. **Federal law, however, does not provide such students an individual entitlement, the development of IEPs, or the same due process rights.** Under IDEA, school districts must conduct child find activities and evaluations to determine students' eligibility for special education.<sup>43</sup> In contrast to state law that requires all eligible students to have an IEP, federal law requires school districts to expend a “proportionate share” of the federal grant money districts receive under Part B of IDEA (grants 240 and 262) to provide services to parentally-placed and privately enrolled students.<sup>44</sup> Proportionate share means that the district must spend an amount of each of these grants on services for eligible students **who attend a private school in the district** that corresponds to the proportion that these private school students represent in comparison with the total population of students with IEPs served by the district under each grant.<sup>45</sup> Federal due process protections generally are not available to privately enrolled students receiving equitable services under IDEA.<sup>46</sup>

Following timely and meaningful consultation with private school and parent representatives (see p. 5) of students attending schools located within the district, school districts must make decisions regarding the child find process and which services to provide with the proportionate share of 240 and 262 grant funds. Districts provide these services to eligible private school students attending a private school within the geographic boundaries of the district through a "services plan" instead of an IEP,<sup>47</sup> because privately enrolled students do not have an individual entitlement to the full range of special education and related services under federal law. The district must make reasonable efforts to provide the services on the plan to the private school student in the community where the private school is located. If, after making such efforts, the district determines that no such arrangements are feasible, the district may serve the student in the district of residence or another location.<sup>48</sup>

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<sup>42</sup> 603 CMR 28.03(1)(e)(4).

<sup>43</sup> 20 U.S.C. § 1412(a)(10)(A); 34 CFR § 300.131.

<sup>44</sup> 34 CFR § 300.133.

<sup>45</sup> 20 USC § 1412(a)(10)(A).

<sup>46</sup> 34 CFR § 300.140. A due process complaint may be filed regarding child find with the district in which the student is privately enrolled. Disputes regarding equitable services, such as a failure to properly conduct the consultation process, may be addressed through the state complaint procedures.

<sup>47</sup> 34 CFR §§ 300.132(b), 300.137-300.139.

<sup>48</sup> Students may receive services at the public school or in another public or neutral setting.

The district may need to provide the student with transportation in order to ensure that the student has access to the necessary services.<sup>49</sup>

### **Reconciling the Differences Between State and Federal Requirements for Private School Students**

Federal law requires that the district where the private school is located, rather than the district of residence, fulfill the requirements for child find and for proportionate share services.<sup>50</sup> This is intended to improve private school students' access to special education services by decreasing obstacles to student participation and simplifying consultation with private schools. The district where a private school is located must meet federal special education requirements for all eligible students who are privately enrolled in schools within the geographic boundaries of the district, regardless of where those students live.

Massachusetts law, however, requires the school district where the student resides to offer special education and related services to eligible students through IEPs. Students who live in Massachusetts have individual entitlements to special education and related services as described on their IEPs. The districts in which privately enrolled students live are responsible for finding, evaluating, and providing services to such students.

Because there is an overlap of responsibilities under federal and state law, a parent may choose whether to seek an evaluation and services from the district of residence or from the district in which their child is privately enrolled.<sup>51</sup> When a request for an evaluation is received by a district, DESE recommends that the district consult with other districts that may have evaluated or provided services to the student.

A district's obligations under state and federal law will vary depending upon where students live and where they are privately enrolled and the choices a parent makes regarding evaluation and services for their child. For some students who are privately enrolled, such as those who are home schooled, the district in which they live will be the same as the district in which they attend school. In those situations, the district of residence is responsible for fulfilling all obligations under state and federal law. Other students live in one district and attend a private school in another district. In these cases, the two districts will need to coordinate to meet state and federal obligations for these students. The district in which the student attends private school is responsible for meeting federal proportionate share obligations, and the district of residence is responsible for meeting state special education requirements of free, appropriate public education. For students who reside in another state but attend a private school in Massachusetts, the district in which the private school is located must fulfill the proportionate share obligations under federal law.

### **Complaints and Due Process**

Under federal law, a private school official or a parent has the right to submit a complaint to DESE that the district did not meet the requirements under IDEA for privately enrolled students, such as engaging in consultation that was timely and meaningful or giving due consideration to the views of the private schools.

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<sup>49</sup> The cost of transportation may be included in calculating whether the district has met the proportionate share obligation. 34 CFR § 300.139(b)(2).

<sup>50</sup> 34 CFR § 300.131.

<sup>51</sup> For some students who are privately enrolled, the district in which they live will be the same as the district in which they attend school.

Such complaints may be made through DESE's [Problem Resolution System](#) and must allege “a violation that occurred not more than one year prior to the date that the complaint is received.”<sup>52</sup>

Under federal law, however, parents are not entitled to due process protections to challenge the sufficiency of the proposed proportionate share services or the districts' actions in connection with a services plan for a student. A parent, however, may file a complaint with the district regarding child find requirements.<sup>53</sup> Child find complaints should be filed with the district in which the private school is located and a copy must be forwarded to the DESE's Problem Resolution System.

Parents of eligible students who live in Massachusetts may also receive special education and related services through an IEP from their district of residence. Such parents and students have access to the full range of dispute resolution and due process options described in state and federal law. They may file a state complaint with DESE through the Problem Resolution System or seek a hearing or mediation with the [Bureau of Special Education Appeals](#) on any matter related to evaluation or special education services.

### Reporting and Oversight

DESE will exercise oversight of proportionate share activities in three ways. These include annual reviews of data; (2) Coordinated Program Review processes; and (3) financial audits.

1. **Reviews of Data:** DESE uses the Proportionate Share Forms to review data on consultation, child count, and projected use of 240 and 262 grant funds. DESE examines data for developing trends.
2. **[Coordinated Program Review](#):** DESE reviews two criteria during the Coordinated Program Review for Special Education Monitoring process regarding privately enrolled students. The criteria are entitled: *SE 39-A: Procedures used to provide services to eligible students enrolled in private schools at private expense whose parents reside in the district*, and *Item SE 39-B: Procedures used to provide services to eligible students who are enrolled at private expense in private schools in the district and whose parents reside out of state*.
3. **Financial audits:** DESE's Office of Audit and Compliance reviews compliance with special education financial requirements, including proportionate share requirements annually. A financial audit will examine the calculation of proportionate share and the corresponding Fund Code 240 and 262 budgets, the back-up documentation, such as the list of private school students, the signed Written Affirmation(s) of Consultation, and documentation of spending of the proportionate share for each grant for the appropriate services.

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We hope this Advisory assists special education administrators, school business managers, and other interested parties in understanding these requirements and in ensuring that local practices are consistent with state and federal law.

### For more information:

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<sup>52</sup> 34 CFR §300.153(c). This includes complaints for continuing violations and for compensatory services. Questions and Answers on IDEA Part B Dispute Resolution Procedures, OSERS, July 2013 (revised), Answer to Question B-18.

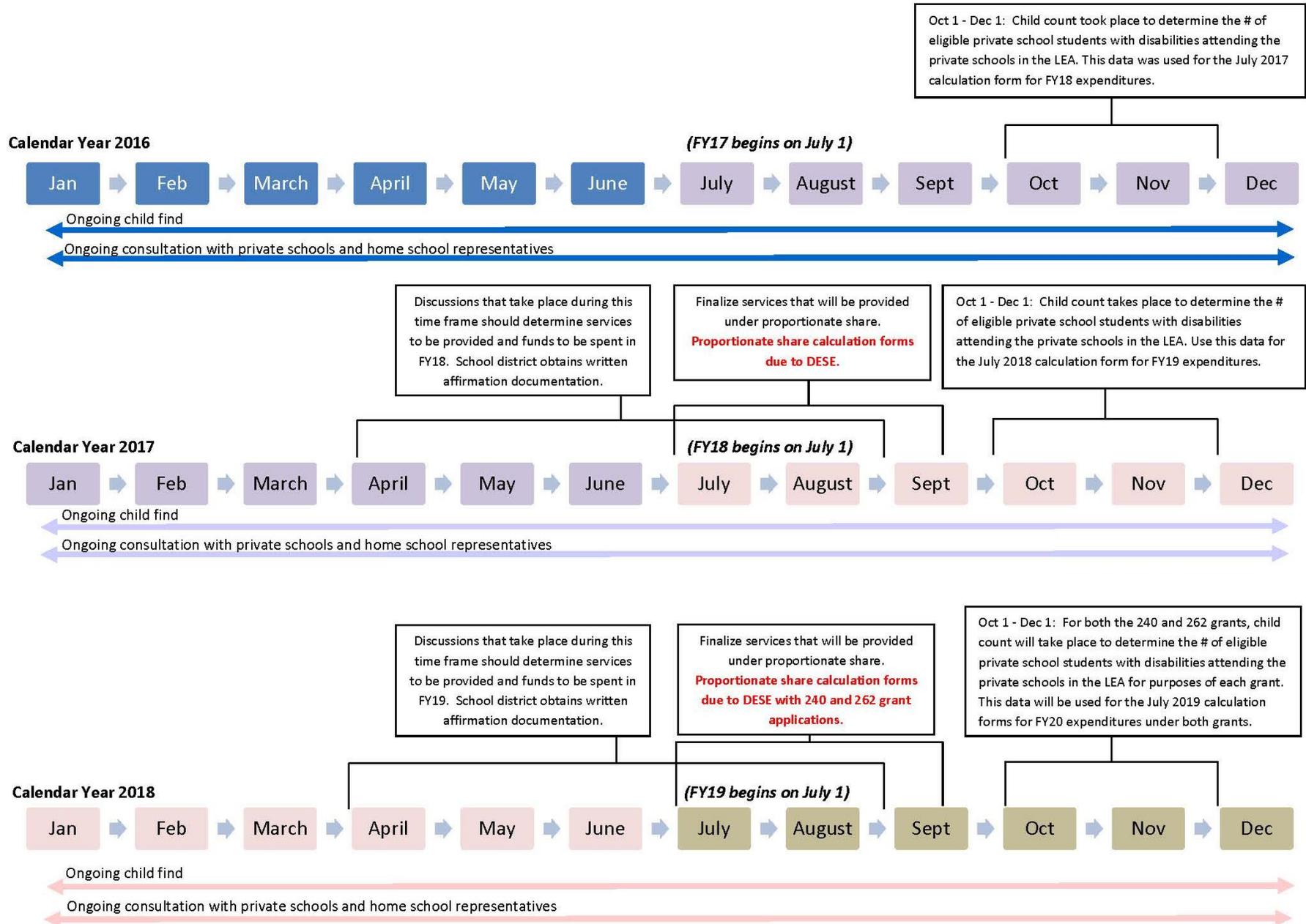
<sup>53</sup> 34 CFR § 300.140.

If you have any questions or require additional information regarding this Advisory, please contact us at: [IDEAEquitableServices@doe.mass.edu](mailto:IDEAEquitableServices@doe.mass.edu).

Thank you for your cooperation and your service to students.

## Attachments

## Attachment A: Proportionate Share Timeline



## Attachment B: Suggested Roles for Proportionate Share Activities

### School district where private school is located:

1. Establish a district point-of contact to liaise with the private schools in the district.
  2. Formally invite private school representatives and home school representatives, and parents, to a meeting(s) to discuss:
    - a. Child find process
    - b. Determination of proportionate share
    - c. Consultation schedule and methodology for the year
    - d. Provision of proportionate share services
    - e. Written explanation of proportionate share services if the district disagrees with the views of the private school officials
  3. Obtain written affirmation from participants following consultation meeting.
  4. Conduct child find to locate, identify, and evaluate all children with disabilities living in the district (consistent with state obligations under M.G.L. c. 71B, § 3) or privately educated in the district (consistent with IDEA).
  5. Evaluate and determine eligibility for students privately educated and suspected of having a disability.
  6. If a student is presented as an eligible student, may request documentation of eligibility from parent.
  7. If the school district disagrees with the views of the private school officials on the provision or type of services, the district must provide private school officials with a written explanation of the reasons the district chose not to provide services directly or through a contract.
  8. Write Services Plans for eligible students who are privately educated and receive proportionate share services.
  9. Oversee all purchases, materials, equipment, and vendors paid for with federal IDEA funds to meet proportionate share obligations.
  10. Collect equipment/technology materials at the end of the services year, or earlier if necessary. The resources remain the property of the public school district.
  11. Conduct child count between October 1 and December 1 annually. This is the basis for proportionate share calculation and expenditure for the next fiscal year.
  12. Following consultation, exercise decision-making authority regarding the use of the proportionate share funds. Submit proportionate share forms to DESE with the 240 and 262 grant applications (July-August).
  13. Document private school student numbers – parentally placed private school students attending a school located in the district, and home school students educated in the district – for proportionate share federal data collection:
    - a. The number of private school and home schooled students evaluated;
    - b. The number of private school and home schooled students determined to be eligible; and
    - c. The number of private school and home schooled students served.
- This does not include private school students residing in the district but privately educated outside the district.

### Private school / home school representatives – schools located within the district and home schooled students residing in the district:

1. Update [private school contact information](#) on the [ESE Profiles](#) website.
2. Establish a private school point-of contact to liaise with the public school district.
3. Attend consultation meeting(s) with the public school district.
4. Provide written affirmation of participation following consultation meeting.
5. Provide information to private school parents about child find and referral processes.
6. Provide information to the public school district about eligible students attending the private school.
7. Consult with public school on the suggested provision of proportionate share services.
8. Return special education equipment/technology materials to public school district at the end of the service year, or earlier if necessary.

### Parents of privately placed students attending school located within the district:

1. Obtain information from the public school district or private school regarding child find.
2. If an evaluation was done by the district of residence or another district and your child was found eligible and has an IEP, provide a copy of current IEP to the private school or directly to the public school district where the private school is located.
3. If an evaluation and IEP was written by a district other than the district where the private school is located, provide consent for schools/districts to discuss your child's education plan.

**Attachment C: Sample Written Affirmation**

*Sample Form: This is provided solely as an exemplar.*

**Written Affirmation of Consultation  
with Private School Representatives concerning Special Education Services**

I hereby affirm that I was invited to and participated in the private/parochial school providers' consultation meeting sponsored by (SCHOOL DISTRICT) and held on (DATE) in accordance with the requirements of the Individuals with Disabilities Education Act (IDEA). During the course of the consultation, the following issues were discussed:

- the child find process and how parentally-placed students who are privately educated and 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 amount of federal funds available to serve parentally-placed private school students with disabilities under this paragraph, including the determination of how the amount was calculated and allocated.
- the consultation process among the school district, private school officials, and representatives of parents of parentally-placed students with disabilities who are privately educated, including how such process will operate throughout the school year to ensure that parentally placed-private school students with disabilities identified through child find can meaningfully participate in special education and related services;
- how, where, and by whom special education and related services will be provided for parentally-placed students with disabilities who are privately educated, including a discussion of types of services and how and when these decisions will be made, 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
- how, if the school district 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 school district shall provide to the private school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

I was provided the opportunity to express my views and to ask questions of the school district pertaining to these issues. I understand that if I believe that the consultation was not meaningful, or that my views and those of others were not given due consideration by the school district, I may file a State complaint with the Massachusetts Department of Elementary and Secondary Education that identifies the area(s) in which I believe the school district did not comply with the consultation process.

**PRIVATE SCHOOL REPRESENTATIVE:** \_\_\_\_\_

**PRINTED NAME:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

Attachment D: Summary of District Obligations\*

Student	Where does the eligible student live?	Where does the eligible student attend private school?	Who is responsible for child find?	Who is responsible for evaluation/eligibility determination?	Who includes the student in child count (whether or not they are receiving services and whether or not they decline services offered)?	Who provides services?	Do parent/child have access to due process?
<p>1.</p> 	District A	District A	District A (district where private school is located per federal law)	District A (district of residence/where private school is located per state and federal law)	District A (district where private school is located per federal law)	District A – pursuant to an IEP (district of residence per state law) District A – pursuant to a services plan (district of location per federal law)	Yes, if an IEP
<p>2.</p> 	District A	District B	District B (district where private school is located per federal law)	District A (district of residence per state law) and District B (district of location per federal law)	District B (district where private school is located – per federal law).	District A – pursuant to an IEP (district of residence per state law) and District B – pursuant to a services plan (district of location per federal law)	Yes, if an IEP
<p>3.</p> 	Another state	District B	District B (district where private school is located per federal law)	District B (district where private school is located per federal law)	District B (district where private school is located per federal law)	District B – pursuant to a services plan, if appropriate, with proportionate share funds (district where private school is located per federal law)	No, except for child find (per federal law)

\*Updated December 2018

**Attachment E: Sample "Services Plan" Form**

*Sample Form: This is provided solely as an exemplar.*

Anytown Public Schools

Date of Notice: xx/xx/xx

Special Education SERVICES PLAN for \_\_\_\_\_ *(Name of Eligible Private School Student)*

School: \_\_\_\_\_

Provided for the period of \_\_\_\_\_ *(dates of service – not to exceed one school year)*

The following services will be provided for the eligible private school student named above.

<b>Special Education and/or Related Services (Direct Services)</b>					
Type of Service	Person(s) Responsible	Start Date	Freq/Duration /Day	Location of Service	Comments (if applicable)
<b>Training or Support Services (Indirect services for School Personnel and/or Parents)</b>					
Type of Service	Person(s) Responsible	Start Date	Freq/Duration /Day	Location of Service	Comments (if applicable)

**Evaluation and Service Delivery Information:** *(Provide individual evaluation information related to the above-named student with sufficient detail that the service delivery can be individualized to meet the student’s needs. It may be helpful to identify specific goals.)*

Please contact \_\_\_\_\_ at \_\_\_\_\_ (phone) if you have any questions about these services. Use of these services does not constitute an individual entitlement or an individual commitment by Anytown Public Schools to provide such services.

Administrator of Special Education  
Anytown Public Schools

## Attachment F: Frequently Asked Questions

The Office of Special Education and Rehabilitative Services (OSERS) has prepared an extensive question and answer (Q&A) document to address some of the most important issues raised by requests for clarification on a variety of high-interest topics for serving children with disabilities placed by their parents in private schools. To access the entire document, please see <http://www.doe.mass.edu/sped/proshare/>.

ESE has received some additional questions which are answered below:

- 1. If a private school has two campuses in two different towns, which school district is responsible for meeting proportionate share responsibilities for eligible students attending the private school? What if the school's mailing address is in another town?**

Federal law refers to the obligations for students enrolled in private schools located in the LEA. Therefore, we understand this to mean that proportionate share is based on the actual location where the student attends school. In this case, Town A is responsible for meeting proportionate share obligations for students attending school on Campus A, while Town B is responsible for such obligations relative to students attending school on Campus B. The mailing address of the school's administrative office is not relevant.

- 2. Must a parent of a private school student seek an evaluation from the school district where the private school is located or from the school district where the student resides?**

Parents of parentally placed private school students suspected of having a disability have the right to ask for an evaluation from the district where the private school is located and from the district of residence. IDEA requires school districts to evaluate and to determine whether students are eligible for special education services if they are privately enrolled and receiving their education within the district's boundaries. The Massachusetts school district where the private school is located may conduct its own evaluation in a manner consistent with the requirements of state and federal law or may accept a prior evaluation if the evaluation information is comprehensive and current. If a parent elects to have the district of residence evaluate a student for eligibility and, if eligible, create an IEP for the student, then the district where the private school is located may accept the evaluation results of the other district in order to avoid duplicative testing.

- 3. Are eligible private school students who attend a private school in the district 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 district?**

Yes, eligible private school students who attend a private school in the district and have refused services are still included in the 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 proportionate share services, the student will remain in the district's child count for the entire period of eligibility. The district 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 district, following meaningful consultation with private school and home school representatives and private school parents.

- 4. 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.

- 5. What kind of documentation should the district request to verify that students are eligible for services under proportionate share?**

The public school district can request the same documentation it would for any student to determine eligibility, such as a current copy of the IEP.

**6. What do public school districts and private schools need to do to comply with information sharing regarding student records?**

Districts and schools are reminded to comply with all applicable state and federal regulations regarding sharing student information, which for public schools includes FERPA and 603 CMR 23.00. The Department also suggests consulting your local legal counsel regarding how you can best meet your obligations for information sharing.

**7. Can public school districts submit for Medicaid reimbursement for students receiving eligible services in a private setting?**

Medicaid reimbursement is available for services provided through an IEP only. Therefore, Medicaid reimbursement is not available for services provided with federal funds under IDEA pursuant to a services plan.

**8. Is it permissible for the district of location to contract with the student's district of residence to provide proportionate share special education services?**

Yes. Nothing in IDEA or state law would preclude the district of location from contracting with the student's district of residence to provide special education services.

**9. Can the federal IDEA funds be given to the private school to provide the special education 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 CFR § 300.142 states that “[a]n local educational agency (LEA) may use funds available under sections 611 and 619 of the Act 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.”

**10. How will the district determine how to use the proportionate share amongst the numerous private school students?**

DESE does not prescribe how districts spend the proportionate share funds. Each district, after timely and meaningful consultation with private schools and home school representatives, determines the services they are able to provide. The district must take into consideration input from the private school representatives and parents. If the school district disagrees with the views of the private school officials on the provision or type of services, the district must provide private school officials with a written explanation of the reasons the district chose not to provide services directly or through a contract. Follow up with private school and home school representatives is recommended regarding that determination.

**11. Are all eligible preschool aged children attending private preschools in the district included in the proportionate share child counts under Fund Codes 240 and 262?**

No. Eligible preschool aged children that are enrolled by their parents in private, including religious and independent, schools or facilities in the district *that meet the definition of an elementary school* are included in the district's child count under both Fund Codes 240 and 262. Because stand-alone private preschools or private childcare centers do not meet this definition, eligible preschool aged children attending those programs are not included in the district's proportionate share child count under either grant.

**12. Why do districts need to conduct a separate proportionate share child count and calculation for students ages 3-5 under the 262 grant, given that students ages 3-5 are already included in the proportionate share child count and calculation under the 240 grant for ages 3-21?**

The 240 grant (IDEA Section 611 funds) and the 262 grant (IDEA Section 619 funds) 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 240 grant funds are designated for services to eligible students ages 3-21 and the 262 funds are designated to serve eligible students ages 3-5. The 262 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 districts 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. See 34 CFR 300.133 (a) (1) and (2) and *Appendix B to Part 300 – Proportionate Share Calculation*.

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