

Questions and Answers Regarding Equitable Participation

The reauthorization of IDEA in 2004 and the subsequent 2006 IDEA regulations significantly changed the obligation of States and local education agencies (LEAs) to children with disabilities enrolled by their parents in private elementary and secondary schools.

§612(a)(10)(A) of the Act and 34 CFR §§ 300.130 – 300.144 require LEAs, in which the private schools are located, conduct child find and provide equitable services to parentally-placed private school children with disabilities. In Pennsylvania, intermediate units (IUs) serve as the LEAs for equitable participation.

IDEA mandates that the LEAs (IUs) where the private schools are located, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private elementary schools and secondary schools to calculate the proportionate amount of Federal funds under Part B of the Act that must be spent on parentally-placed private school children with disabilities. Furthermore, after timely and meaningful consultation with representatives of private elementary and secondary schools, and parents of parentally-placed private school children with disabilities there is an obligation that the LEA (IU) will spend a proportionate amount of funds to provide services to children with disabilities enrolled by their parents in private schools. The amount of funds available for equitable participation is now based on the total number of children with disabilities who are enrolled in the private schools located in the LEA (IU) whether or not the children and their parents reside in the LEA (IU).

The following are answers to questions raised regarding equitable participation in Pennsylvania.

Child Find and Evaluation

1. What educational agency has child find responsibilities for equitable participation (EP)?

The LEA in which the private school is located is responsible for the child find process. In Pennsylvania, the IU in which the private school is located has child find responsibilities for EP. For purposes of providing a student with a free and appropriate public education (FAPE), the school district of residence has child find responsibilities. Therefore, in PA, it is conceivable that a parent could obtain evaluations from both the IU the private school is located and the school district of residence.

2. When an LEA (IU) conducts an evaluation, should the LEA (IU) automatically ask for parental consent to share the findings with the district of residence?

An IU may request from the parent permission to share the evaluation information with their district of residence, however the IU may not require that a parent grant this permission in order to move forward with the EP evaluation. 34 CFR §300.622(b)(3) states that if a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials of the LEA of the parent's residence.

3. Do the IDEA regulations allow for different types of evaluations if the parent clearly requests EP services rather than FAPE?

No. 34 CFR §300.131 states that in carrying out the requirements of this § (child find for parentally-placed private school children with disabilities), the LEA must undertake activities similar to the activities undertaken for the agency's public school children.

4. **Who makes the eligibility determination?**
Eligibility for special education and related services are determined by a group of knowledgeable educational professionals including the parent for both FAPE and EP. For purposes of FAPE, the qualified educational professionals should be from the district of residence; for EP purposes, the qualified professionals should be from the IU where the private school is located.
5. **What process is required when the parent is seeking FAPE?**
(1) Upon receipt of parental consent, completion of an evaluation; (2) Eligibility determination; (3) Offer of FAPE by the school district of residence; (4) Acceptance or refusal of FAPE by the parents.
6. **What process is required when the parent is seeking EP only?**
(1) an evaluation conducted by the IU; (2) Eligibility determination; (3) Offer of an EP in a Services Plan if the IU and private school agencies have determined that the EP funds will be directed for the provision of direct service for an individual student. There is no entitlement to direct EP services for individual students; therefore, the sequence may end at step (2).
7. **Can parents insist that the school district of residence conduct an evaluation even if they know they do not want FAPE, and they indicate at the onset their intention is EP services at the private school?**
A parent can request an evaluation from their school district of residence under any circumstances. The school district has the option of either conducting the evaluation or issuing a Notice of Recommended Educational Placement (NOREP) declining to evaluate and offering the parents the opportunity to initiate due process proceedings. The resident district cannot refuse to evaluate a child because the child is attending a private school or because the IU also has a duty to evaluate the child.

Provision of Services

8. **What is an Equitable Participation (EP) Services Plan?**
An EP Services Plan means a written statement that describes the special education and related services the IU will provide to a parentally-placed child with a disability enrolled in a private school and has been designated to receive direct services, including the location of the services, and any transportation necessary.
9. **Does every student getting direct EP services get an EP Services Plan?**
Yes. Every student who has been designated to receive direct services would have an EP Services Plan.
10. **If a child is not getting a direct service should they have an EP Services Plan?**
No, if through the timely and meaningful consultation between the private schools and the IU where the schools are located, EP includes services such as teacher consultation and/or professional development only; there would be no individual EP Services Plan. The type of EP services would be outlined in the IU special Education Plan agreed to by the IU and the private schools through timely and meaningful consultation.
11. **What does an EP Services Plan look like?**
34 CFR §300.138(b)(2) state that the services plan must, to the extent appropriate meet the requirements of 34 CFR §300.320 that are the required contents of an Individualized Education Programs (IEPs) for a student attending public school.

- 12. Can a child have an EP Services Plan and an IEP?**
No, a child would not have both an EP Services Plan and an IEP. An EP Services Plan describes the EP services, while the IEP describes the FAPE. A child is eligible to receive EP Services Plan only in a private school. FAPE is an entitlement that is made available to students enrolled in public schools who are found eligible for special education. There is no entitlement to the provision of FAPE when a parent unilaterally places their child in a private school. A district is not mandated or required to provide FAPE in private school.
- 13. Can a child have a Chapter 15 Service Agreement and an EP Services Plan?**
No. 22 Pa Code §15.2 defines a student who is eligible under Chapter 15 as a student who is not eligible as defined under Chapter 14. To be eligible for EP, a student would have to be eligible under IDEA and Chapter 14 as a student who is eligible for special education. By definition, a student who is eligible under Chapter 15 is not eligible under Chapter 14 and therefore not eligible for EP.
- 14. Once a student receives EP services, when may the services end?**
A student no longer receives EP services when: (1) the student is no longer eligible for such services, (2) funds allocated for EP services are exhausted, or (3) after timely and meaningful consultation with representatives of private elementary schools and secondary schools and representatives of parents of parentally-placed private school children with disabilities, the IU determines that it will no longer offer direct type of EP services.
- 15. How often must a student with a disability enrolled by their parents in a private school be reevaluated?**
34 CFR §300.131(e) requires that a student with a disability enrolled by their parents in a private school must be reevaluated following the same timelines for reevaluation as students with disabilities in public school.
- 16. Does the LEA where the private school is located (IU) notify the district of residence that a reevaluation is needed?**
No. The IU where the private school is located is responsible for conducting the reevaluation. In fact, the IU would have to secure written consent to share such information with the district of residence.
- 17. Does a student with an EP Services Plan qualify for Extended School Year “ESY” services?**
No. EP is not an entitlement to FAPE, and an EP Services Plan is not an IEP. 34 CFR §300.106 requires that an LEA must ensure that ESY services are available as necessary to provide FAPE, not EP.

Record Keeping and Funding

- 18. Who keeps data regarding student with disabilities enrolled by their parents in private schools?**
IDEA (34 CFR §300.132(c)) and Chapter 14 require that each IU where a private school is located must maintain in its records, and provide to the PDE: (1) the number of students evaluated, (2) the number of students determined to be eligible for services, and (3) the number of students served through EP services for parentally-placed private school children.

19. May IUs charge the districts of residence?

No. Charging back to the district of residence is not permitted by IDEA.

20. Who pays for evaluations for EP services?

34 CFR §300.131(a) requires that the IU where the private school is located conducts and pays for special education evaluations. 34 CFR §300.131(d) makes it clear that money for child find activities and evaluations cannot be subtracted from the EP funds made available for EP services.

21. How are EP funds calculated?

The following outlines the calculations of how the IDEA-B proportionate share is calculated:

Number of eligible children with disabilities in public schools in the LEA	300
Number of parentally-placed eligible children with disabilities in private elementary schools and secondary schools located in the LEA	20
Total number of eligible children	320
Total allocation	\$152,500
Divided by total number of eligible students	320
Average allocation per eligible student	\$476.56
Multiplied by number of parentally placed students with disabilities	20
Amount to be expended for parentally placed student with disabilities	\$9531.25

22. Can students receiving EP services be included on the Penn Data Child Count?

No. Only students receiving FAPE can be counted for the Special Education (formerly Penn Data) Child Count. PDE requires reporting on parentally-placed students in private schools (Table 14).

Other

23. Does EP apply when a Kindergarten class is not in an elementary school?

No. EP applies to elementary and secondary schools that meet the definition of an elementary or secondary school in 34 CFR §§300.13 and 300.36.

24. Does EP apply if the parent enrolls and pays for their child in an Approved Private School (APS)?

No. An APS is for publicly placed students with disabilities.

25. Does the documentation of the consultation process between representatives and parents of the private school with representatives of the LEA (IU) where the private schools are located need to be included as part of the IU IDEA-B Grant Application?

Yes. The documentation of the timely and meaningful consultation process between the private and IU officials need to be included as part of the annual IU IDEA-B Grant Application.

26. If the private school official wishes to file a complaint with PDE, how should they proceed?

A private school official has the right to file a complaint with the Bureau of Special Education (BSE) that the IU did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official. Complaints will be handled through the Complaint Management System and should follow the procedures outlined on the BSE's website under Compliance.

27. Is there the possibility to carry over EP funds from one year to another?

Yes. Federal regulations at 34 CFR §300.133 (a)(3) state if an LEA has not expended for equitable services all of the funds of this § by the end of the fiscal year, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period for one additional year.

28. Are EP services restricted to non-profit schools?

Yes. 34 CFR §300.130 states parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious schools or facilities that meet the definition of elementary school in 34 CFR §300.13 or secondary school in 34 CFR §300.36 other than children with disabilities covered under 34 CFR § 300.145 through 300.147.

The definition of elementary school at 34 CFR §300.13 states elementary school means a nonprofit institutional day or residential school, including a public elementary charter school, which provides elementary education, as determined under State law.

Secondary school at 34 CFR §300.26 states secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

29. When it is appropriate to develop an individualized EP Service Plan for a student or students, are there components of the current IEP that do not need to be included or addressed as part of the EP Services Plan development process?

It is difficult to generalize what should or should not be a part of the EP Services Plan because each situation is different. 34 CFR §300.138(b)(2) states that the EP Services Plan must, to the extent appropriate meet the requirements of 34 CFR §300.320. The requirements of 34 CFR §300.320 are the required contents of an IEP for a student attending public school. OSEP states in the discussion § of the regulations that "the EP Services Plan must describe the specific special education and related services offered to a parentally-placed private school child with a disability designated to receive services. The services plan also must, to the extent appropriate, meet the IEP content, development, review, and revision requirements described in § 614(d) of the Act."

Therefore, if a particular § is not necessary to describe the services that the student will be receiving, that § in the EP Services Plan could be marked as not applicable. The only § that clearly is not required under the state or federal regulations is the participation in statewide assessment, as students unilaterally enrolled by their parents in private schools are not mandated to take the statewide assessments. Therefore, it would be allowable for this § to be eliminated for EP services.

- 30. If an EP Services Plan is developed for a student, is it necessary to provide a copy of the procedural safeguards notice to the parents?**
No. The Procedural Safeguards Notice is related to the provision of FAPE and EP services do not provide FAPE. The parents are not entitled to the same procedural protections as the students with disabilities in the public schools.
- 31. Why is the Notice of Recommended Education Placement and Prior Written Notice (NOREP/PWN) not required as a part of the development and implementation of an EP Services Plan?**
It is not needed because the NOREP is designed to provide the parent with the procedural protections with regard to informed consent of the acceptance or rejection of FAPE in the public school. The EP Services Plan only describes the services the student is receiving and is available at the private school as determined by the private school in collaboration with the IU, in which the private school is located.
- 32. Is Least Restrictive Environment (LRE) a component for consideration in the development and implementation of an EP Services Plan?**
No.
- 33. In what circumstances, if any, is it appropriate for an IU to issue a NOREP/PWN as a part of the EP process?**
The NOREP is issued in the EP process when the evaluation of the child identifies the child as not eligible for special education services. In those circumstances a NOREP is issued as the parents have the right to disagree with eligibility determination using the due process.
- 34. Is there a provision in IDEA for parents to request an Independent Education Evaluation (IEE) as a part of the evaluation process under EP?**
No. The IEE at public expense is only available for those parents seeking FAPE, not EP. If the parent is seeking FAPE, the school district of residence would be the entity responsible for the parent to exercise that option.
- 35. Can a student receive EP services and be dual enrolled at a public school?**
Yes. EP is separate from dual enrollment. Dual enrollment is a general principle of education that applies to regular, special, and vocational education (24 P.S. §5-502). For dual enrollment to occur, a student need not be identified as a student with a disability. As such, dual enrollment is distinct from an IU's responsibility to provide EP services to a student with a disability enrolled in a private school by parent.

*These Questions and Answers were reviewed and revised by
Bureau of Special Education*
May 2014